

**RIGHT TO KNOW ADVISORY COMMITTEE
BULK RECORDS SUBCOMMITTEE
LEGISLATIVE SUBCOMMITTEE**

DRAFT AGENDA
November 10, 2011
1:00 p.m.
Room 438, State House, Augusta

Convene

1. Welcome and Introductions
2. Criminal History Record Information Act revision: new subchapter on Intelligence and Investigative Information
Discussion; finalize recommendations to CLAC
3. LD 1465 remaining issues
Form and Format
Prospective technology improvements
Bulk?
Fee structure
Public Access Officer
Public Access Ombudsman
Timelines for compliance
4. Other responsibilities assigned to Legislative Subcommittee
 - Status of Maine Public Broadcasting Network records under the Freedom of Access laws (Mike Brown)
 - Use of technology for the purpose of remote participation by members of public bodies
 - Drafting templates
 - Storage, management and retrieval of public officials' communications, especially email
5. Other?
6. Scheduling future subcommittee meetings?

Scheduled meetings:

Thursday, November 17, 2011, 9:00 a.m., Public Records Exceptions Subcommittee
Thursday, November 17, 2011, 1:00 p.m., Right to Know Advisory Committee
Thursday, December 8, 2011, 1:00 p.m., Right to Know Advisory Committee

Adjourn

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PROPOSED INTELLIGENCE AND INVESTIGATIVE INFORMATION ACT

16 M.R.S.A. ch. 3, sub-ch. 11 [§§ 671-678]

Addresses only Intelligence and Investigative Information (§ 672).
Criminal History Record Information is addressed in a separate
proposed sub-chapter (sub-ch. 10).

Intelligence and Investigative Information:
definition (§ 671(6))
limitations on dissemination and use (§§ 673, 675 & 676)
exceptions (§ 674)
no right to access or review by subject (§ 677)
Class E crime of unlawful dissemination (§ 678)

CHRIA #1

HISTORY OF INTELLIGENCE AND INVESTIGATIVE INFORMATION IN MAINE'S CRIMINAL HISTORY RECORD INFORMATION ACT

1. Prior to 1979, Maine's CHRIA did not address intelligence and investigative information [see Maine's first CHRIA (P.L. 1975, ch. 763)]. It was excluded from the definition of "criminal history record information." See 28 C.F.R., Part 20; see also 1977 pamphlet entitled "Privacy and Security of Criminal History Information: A Guide to Dissemination" prepared by the Privacy and Security Staff of the National Criminal Justice Information and Statistics Service, Law Enforcement Assistance Administration at pages 6-7.
2. In 1979 Maine passed the replacement for P.L. 1975, ch. 763 – namely, P.L. 1979, ch. 433, effective September 14, 1979. [See P.L. 1979, ch. 433 attached]. That Act:
 - A. defined "intelligence and investigative information" in section 611(8). The definition addressed "intelligence and investigative information" only in the context of criminal activity. It provided:

8. Intelligence and investigative information. "Intelligence and investigative information" means information collected by criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, or compiled in the course of investigation of known or suspected crimes. It does not include information that is criminal history record information.
 - B. added section 614. Note that section 614 was made applicable to "a local, county or district criminal justice agency," limited dissemination, and included exceptions as follows:

§ 614. Limitation on dissemination of intelligence and investigative information

1. Limitation on dissemination of intelligence and investigative information. Reports or records in custody of a local, county or district criminal justice agency containing intelligence and investigative information shall be confidential and shall not be

disseminated, if public release or inspection of the report or record may:

- A. Interfere with law enforcement proceedings;
 - B. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;
 - C. Result in public dissemination of information about the private life of an individual in which there is no legitimate public interest and which would be offensive to a reasonable person;
 - D. Disclose the identity of a confidential source;
 - E. Disclose confidential information furnished only by the confidential source;
 - F. Disclose investigative techniques and procedures not generally known by the general public; or
 - G. Endanger the life or physical safety of law enforcement personnel.
2. Exception to this limitation. Nothing in this section shall preclude dissemination of intelligence and investigative information to another criminal justice agency. Intelligence and investigative information may also be disseminated to an accused person or his attorney, if authorized by:
- A. The District Attorney for the district in which that accused person is to be tried;
 - B. A rule or ruling of a court of this State or of the United States; or
 - C. the Attorney General.
3. Effective September 18, 1981, P.L. 1981, ch. 64 added "or in the custody of the criminal law enforcement units of the Department of Marine Resources or the Department of Inland Fisheries and Wildlife" to which section 614(1) applied.
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4. Effective April 18, 1984, P.L. 1983, ch. 787 added to then section 614(1)(F) "security plans and procedures" and included "operation plans of the collecting agency or another agency" in the definition of "intelligence and investigative information" in section 611(8).
5. Effective March 3, 1986, P.L. 1985, ch. 552 added "in the custody of the Office of the State Fire Marshal" to which section 614(1) applied.

6. Effective March 25, 1992, P.L. 1991, ch. 729 added “in the custody of the Department of Corrections” to which 614(1) applied and changed the standard limiting dissemination as follows: “are confidential and may not be disseminated, if there is a reasonable possibility that public release or inspection of the report or record would:”(emphasis supplied) [paragraphs A-G remained unchanged].
7. Effective April 8, 1992, P.L. 1991, ch. 837, § B-5 added “or in the custody of the Maine Drug Enforcement Agency” to which section 614(1) applied.
8. Effective October 13, 1993, P.L. 1993, ch. 376, § 1 repealed and reenacted section 614(1) because of a conflict between P.L. 1991, chapters 729 and 837. Further, it added “in the custody of the Bureau of State Police” to which section 614(1) applied.
- *9. Effective July 14, 1994, P.L. 1993, ch. 719, “An Act to Bring the Department of the Attorney General into Conformity with the Criminal History Record Information Laws,” made the following significant changes:

First, it added “the Department of the Attorney General” in its entirety to the definition of a “criminal justice agency” in section 611(4).

Second, it amended the definition of “intelligence and investigative information” in section 611(8) to read:

8. Intelligence and investigative information. “Intelligence and investigative information” means information collected by criminal justice agencies or at the direction of criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, ~~including operation plans of the collecting agency or another agency,~~ or information compiled in the court of investigation of known or suspected crimes, civil violations and prospective and pending civil actions. It “Intelligence and investigative information” does not include information that is criminal history record information.

Third, it repealed and replaced section 614(1). New section 614(1) included “the Department of Attorney General” to which section 614(1)

applied, added paragraphs F, I, J and K, and modified both former paragraphs C and G (now paragraphs C and H) to read:

~~C. Result in public dissemination of information about the private life of an individual in which there is no legitimate public interest and which would be offensive to a reasonable person~~ Constitute an unwarranted invasion of personal privacy.

...

H. Endanger the life or physical safety of any individual, including law enforcement personnel.

Fourth, it repealed 5 M.R.S.A. § 200-D (enacted by P.L.1975, ch. 715, effective April 1, 1976) that had read:

§ 200-D. Complaints and investigative records confidential

Notwithstanding any other provision of law, all complaints and investigative records of the Department of the Attorney General shall be and are declared to be confidential.

However, it made the repeal of section 200-D applicable only to reports and records that were created after July 1, 1995. Section 11 of chapter 719 provided:

Sec. 11. Effect of repeal of Maine Revised Statutes, Title 5, section 200-D. Reports and records that were created prior to the effective date of this Act that were confidential pursuant to the Maine Revised Statutes, Title 5, section 200-D at the time of their creation continue to be confidential after the effective date of this Act as provided in former Title 5, section 200-D. The confidentiality of intelligence and investigative information contained in reports and records prepared by or at the direction of the Department of the Attorney General after the effective date of this Act is governed by Title 16, section 614.

[See P.L. 1979, ch. 433 attached]

10. Effective September 29, 1995, P.L. 1995, ch. 135 added “or the Department of Conservation, Forest Fire Central Division when the reports and records pertain to arson” to which section 614(1) applied.

11. Effective September 19, 1997, P.L. 1997, ch. 456(10) added to section 614 current subsection 1-A that reads:

Sec. 10 16 MRSA § 614, sub-§ 1-A is enacted to read:

1-A. Limitation on release of identifying information; cruelty to animals. The names of and other identifying information on persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Food and Rural Resources is confidential information and may not be disseminated.

12. Effective September 18, 1999, P.L. 1999, ch. 155, § A-5 changed "Forest Fire Central Division" to read "Division of Forest Protection" in section 614(1).
13. Effective September 18, 1999, P.L. 1999, ch. 305, § 1 amended section 614(2) to read:

2. Exception to this limitation. Nothing in this section shall preclude precludes dissemination of intelligence and investigative information to another criminal justice agency or, for use in the investigation of suspected abuse or neglect, to the Department of Human Services, Bureau of Child and Family Services. Intelligence and investigative information may also be disseminated to an accused person or ~~his~~ that person's attorney, if authorized by:

- A. The District Attorney for the district in which that accused person is to be tried;
- B. A rules or ruling of a court of this State or of the United States; or
- C. The Attorney General.

14. Effective July 25, 2002, P.L. 2001, ch. 532, sub-§§ 1, 2 repealed section 614(2) and enacted in its stead section 614(3). Subsection 3 read:

3. Exceptions. Nothing in this section precludes dissemination of intelligence and investigative information to:

- A. Another criminal justice agency;

B. A state agency responsible for investigating abuse, neglect or exploitation of children under Title 22, chapter 1071 or incapacitated or dependent adults under Title 22, chapter 958-A for use in the investigation of suspected abuse, neglect or exploitation; or

C. An accused person or that person's agent or attorney if authorized by:

(1) The district attorney for the district in which that accused person is to be tried;

(2) a rule or ruling of a court of this State or of the United States; or

(3) The Attorney General.

15. Effective September 13, 2003, P.L. 2003, ch. 402 added current section 614(3)(D). Paragraph D provides:

D. A victim or victim's agent or attorney, subject to reasonable limitations to protect the interest described in subsection 1.

16. Effective September 12, 2009, P.L. 2009, ch. 182 added current 614(3)(E) and section 614(4). Paragraph E and subsection 4 read as follows:

E. An advocate, as defined in section 58-B, subsection 1, paragraph A, with a specific agreement with a criminal justice agency and subject to reasonable limitations to protect the interests described in subsection 1. An agreement between an advocate and a criminal justice agency must, at a minimum, include provisions that:

(1) Permit the advocate to use reports or records that contain intelligence and investigative information for the purpose of planning for the safety of the victim named in the reports;

(2) Prohibit the advocate from further disseminating reports or records that contain intelligence and investigative information;

(3) Require the advocate to ensure that reports and records that contain intelligence and investigative information remain secure and confidential;

(4) Require the advocate to destroy reports or records that contain intelligence and investigative information within 30 days after receiving the report or record;

(5) Permit the criminal justice agency to perform reasonable and appropriate audits in order to ensure that records containing

intelligence and investigative information that are obtained by and that are in the custody of the advocate are maintained in accordance with the requirements of this paragraph;

(6) Require the advocate to indemnify and hold harmless the criminal justice agency with respect to any litigation that may result from the provision of reports or records that contain intelligence and investigative information;

(7) Permit the criminal justice agency to immediately and unilaterally revoke an agreement made pursuant to this paragraph; and

(8) Provide sanctions for any violations of this paragraph.

The Commissioner of Public Safety may adopt a model policy to standardize the provisions contemplated in this paragraph.

....

4. Unlawful dissemination of reports and records that contain intelligence and investigative information. A person that intentionally disseminates a report or record that contains intelligence and investigative information in violation of this section commits a Class E crime.

17. Effective April 25, 2011 (emergency), P.L. 2011, ch. 52 added 614(3)(B-1). Paragraph B-1 reads as follows:

B-1. The division of licensing and regulatory services within the Department of Health and Human Services for use in the investigation of suspected abuse, neglect or exploitation in licensed, certified and registered facilities and programs that provide care to children and adults;

18. Effective September 28, 2011, P.L. 2011, ch. 210 added “or the Department of Agriculture, Food and Rural Resources when the reports or records pertain to animal cruelty” to which section 614(1) applied.

19. Effective June 15, 2011, (emergency), P.L. 2011, ch. 356 added “or the Department of the Secretary of State, Bureau of Motor Vehicles, Office of Investigations” to which section 614(1) applied.

R.L. 1979, ch. 433, effective September 14, 1979

688
CHAP. 433

PUBLIC LAWS, 1979

CHAPTER 433

H. P. 1425 — L. D. 1632

AN ACT to Amend the Laws Relating to Criminal History Record Information.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 16 MRSA c. 3, sub-c. VII, as amended, is repealed.

Sec. 2. 16 MRSA c. 3, sub-c. VIII is enacted to read:

SUBCHAPTER VIII

CRIMINAL HISTORY RECORD INFORMATION ACT

§ 611. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. Administration of criminal justice. "Administration of criminal justice" means detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage and dissemination of criminal history record information.

2. Conviction data. "Conviction data" means criminal history record information other than nonconviction data.

3. Criminal history record information. "Criminal history record information" means notations or other written evidence of an arrest, detention, complaint, indictment, information or other formal criminal charge relating to an identifiable person. It shall include the identification or description of the person charged and any disposition of the charge. The term does not include identification information such as fingerprints, palm prints or photographic records to the extent that the information does not indicate involvement of the individual in the criminal justice system. The term does not include records of civil violations.

4. Criminal justice agency. "Criminal justice agency" means a federal, state, district, county or local government agency or any subunit thereof which performs the administration of criminal justice under a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. Courts shall be deemed to be criminal justice agencies.

5. Disposition. "Disposition" means the conclusion of criminal proceedings, and includes acquittal, acquittal by reason of mental disease or defect, filing of case, dismissal of charge, dismissal of charge due to mental incompetency, continuance due to mental incompetence, guilty plea, nolo contendere plea, nolle prosequi, conviction, sentence, death of defendant, mistrial, new trial granted, release from correctional supervision, parole, pardon, amnesty or extradition. If the disposition is that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, it shall include the nature of the termination or conclusion of the proceedings. If the disposition is that the proceedings have been indefinitely postponed, it shall include the reason for that postponement.

6. Dissemination. "Dissemination" means the transmission of information, whether orally, in writing or by electronic means by or to anyone outside the agency which maintains the information.

7. Executive order. "Executive order" means an order of the President of the United States or the chief executive of a state which has the force of law and which is published in a manner permitting regular public access thereto.

8. Intelligence and investigative information. "Intelligence and investigative information" means information collected by criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, or compiled in the course of investigation of known or suspected crimes. It does not include information that is criminal history record information.

9. Nonconviction data. "Nonconviction data" means criminal history record information of the following types:

A. Arrest information without disposition, if an interval of one year has elapsed from the date of the arrest and no active prosecution of the charge is pending. To be an active prosecution the case must be still actively in process, with arraignment completed and the case docketed for court trial;

B. Information disclosing that the police have elected not to refer a matter to a prosecutor;

C. Information disclosing that a prosecutor has elected not to commence criminal proceedings;

D. Information disclosing that criminal proceedings have been indefinitely postponed, e.g. a "filed" case, or a case which cannot be tried because the defendant is found to be mentally incompetent to stand trial;

E. A dismissal;

F. An acquittal, excepting an acquittal by reason of mental disease or defect; and

G. Information disclosing that a person has been granted a full and free pardon or amnesty.

10. Person. "Person" means an individual, government agency or a corporation, partnership or unincorporated association.

11. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.

12. Statute. "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.

§ 612. Application

1. Criminal justice agencies. This subchapter shall apply only to criminal justice agencies.

2. Exceptions. This subchapter shall not apply to criminal history record information contained in:

A. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;

B. Original records of entry, such as police blotters, that are maintained by criminal justice agencies and that are compiled and organized chronologically;

C. Records, retained at and by the District Court and Superior Court, of public judicial proceedings, including, but not limited to, docket entries and original court files;

D. Court or administrative opinions not impounded or otherwise declared confidential;

E. Records of public administrative or legislative proceedings;

F. Records of traffic offenses retained at and by the Secretary of State; and

G. Petitions for and warrants of pardons, commutations, reprieves and amnesties.

3. Permissible disclosure. Nothing in this subchapter shall be construed to prohibit a criminal justice agency from:

A. Disclosing to the public criminal history record information related to an offense for which a person is currently within the criminal justice system;

B. Confirming prior criminal history record information to the public, in

response to a specific inquiry that includes a specific name, date and charge or disposition, provided that the information disclosed is based upon data excluded by subsection 2. The disclosing criminal justice agency shall disclose therewith any and all criminal history record information in its possession which indicates the disposition of the arrest, detention or formal charges; and

C. Disseminating criminal history record information for purposes of international travel such as issuing visas and granting of citizenship.

§ 613. Limitations on dissemination of nonconviction data

Except as provided in section 612, subsections 2 and 3, dissemination of nonconviction data by a criminal justice agency, whether directly or through any intermediary, shall be limited to:

1. Criminal justice agencies. Other criminal justice agencies for the purpose of the administration of criminal justice and criminal justice agency employment;

2. Under express authorization. Any person for any purpose when expressly authorized by statute, executive order, court rule, court decision or court order. Express authorization shall mean language in the statute, executive order, or court rule, decision or order which specifically speaks of nonconviction data or specifically refers to one or more of the types of nonconviction data;

3. Under specific agreements. Any person with a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice or to conduct investigations determining the employment suitability of prospective law enforcement officers. The agreement shall specifically authorize access to data, limit the use of the data to purposes for which given, insure security and confidentiality of the data consistent with this subchapter and provide sanctions for any violations; and

4. Research activities. Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluation or statistical purposes, insure the confidentiality and security of the data consistent with this subchapter and provide sanctions for any violations.

§ 614. Limitation on dissemination of intelligence and investigative information

1. Limitation on dissemination of intelligence and investigative information. Reports or records in the custody of a local, county or district criminal justice agency containing intelligence and investigative information shall be confidential and shall not be disseminated, if public release or inspection of the report or record may:

A. Interfere with law enforcement proceedings;

B. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;

C. Result in public dissemination of information about the private life of an individual in which there is no legitimate public interest and which would be offensive to a reasonable person;

D. Disclose the identity of a confidential source;

E. Disclose confidential information furnished only by the confidential source;

F. Disclose investigative techniques and procedures not generally known by the general public; or

G. Endanger the life or physical safety of law enforcement personnel.

2. Exception to this limitation. Nothing in this section shall preclude dissemination of intelligence and investigative information to another criminal justice agency. Intelligence and investigative information may also be disseminated to an accused person or his attorney, if authorized by:

A. The District Attorney for the district in which that accused person is to be tried;

B. A rule or ruling of a court of this State or of the United States; or

C. The Attorney General.

§ 615. Dissemination of conviction data

Conviction data may be disseminated to any person for any purpose.

§ 616. Inquiries required

A criminal justice agency shall query the State Bureau of Identification prior to dissemination of any criminal history record information for noncriminal justice purposes to assure that the most up-to-date disposition data is being used.

§ 617. Dissemination to noncriminal justice agencies

Criminal history record information disseminated to a noncriminal justice agency under section 613 shall be used solely for the purpose of which it was disseminated and shall not be disseminated further.

§ 618. Confirming existence or nonexistence of criminal history record information

Except as provided in section 612, subsection 3, paragraph B, no criminal justice agency shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.

§ 619. Unlawful dissemination

1. Offense. A person is guilty of unlawful dissemination if he knowingly disseminates criminal history information in violation of any of the provisions of this subchapter.

2. Classification. Unlawful dissemination is a Class E crime.

§ 620. Right to access and review

1. Inspection. Any person or his attorney may inspect the criminal history record information concerning him maintained by a criminal justice agency. A person's right to inspect or review criminal history record information shall not include access to intelligence and investigative information or any other information which is not criminal history record information. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary. These restrictions shall be to insure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The agency shall supply the person or his attorney with a copy of the criminal history record information pertaining to him on request and payment of a reasonable fee.

2. Review. A person or his attorney may request amendment or correction of criminal justice record information concerning him by addressing, either in person or by mail, his request to the criminal justice agency in which the information is maintained. The request shall indicate the particular record involved, the nature of the correction sought and the justification for the amendment or correction.

On receipt of a request, the criminal justice agency shall take necessary steps to determine whether the questioned information is accurate and complete. If investigation reveals that the questioned information is inaccurate or incomplete, the agency shall immediately correct the error or deficiency and advise the requesting person that the correction or amendment has been made.

Not later than 15 days, excluding Saturdays, Sundays and legal public holidays, after the receipt of a request, the agency shall notify the requesting person in writing either that the agency has corrected the error or deficiency or that it refuses to make the requested amendment or correction. The notice of refusal shall include the reasons therefor, the procedure established by the agency for requesting a review by the head of the agency of that refusal and the name and

business address of that official.

3. Administrative appeal. If there is a request for review, the head of the agency shall, not later than 30 days from the date of the request, excluding Saturdays, Sundays and legal public holidays, complete the review and either make the requested amendment or correction or refuse to do so. If the head of the agency refuses to make the requested amendment or correction, he shall permit the requesting person to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal. He shall also notify the person of the provisions for judicial review of the reviewing official's determination under subsection 4.

Dissemination of the disputed criminal history record information by that agency with which the requesting person has filed a statement of disagreement, occurring after the filing of such statement, shall clearly reflect notice of the dispute. A copy of the statement shall be included, along with, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendment or correction requested.

4. Judicial review. If an administrative appeal brought pursuant to subsection 3 is denied by the head of the agency, or the requesting person believes the decision of the head of the agency to be otherwise unsatisfactory, the person may, within 30 days of the decision rendered by the head of the agency, seek relief in the Superior Court.

5. Notification. When a criminal justice agency has amended or corrected a person's criminal history record information in response to written request as provided in subsection 2 or a court order, the agency shall, within 30 days thereof, advise all prior recipients, who have received that information within the year prior to the amendment or correction, of the amendment or correction. It shall also notify the person of compliance with that requirement and the prior recipients notified.

6. Right of release. The provisions of this subchapter shall not limit the right of a person to disseminate to any other person criminal history record information pertaining to himself.

§ 621. Information and records of the Attorney General, State Police and Bureau of Identification

Nothing in this subchapter shall require dissemination of information or records of the Attorney General, State Police or Bureau of Identification that are declared to be confidential under Title 5, section 200-D or Title 25, section 1631.

§ 622. Application

The provisions of this subchapter shall apply to criminal history record information in existence before July 29, 1976, including that which has been

previously expunged under any other provision of Maine law, as well as to criminal history record information in existence on July 29, 1976 and thereafter.

Effective September 14, 1979

CHAPTER 434

H. P. 1050 — L. D. 1301

AN ACT to Clarify the Requirements Relating to Campaign Reports and Finances.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 21 MRSA § 1396, sub-§ 2, ¶B, as repealed and replaced by PL 1975, c. 759, § 1, is amended to read:

B. The identification of every person making a contribution in excess of \$10, and the date and amount thereof and, if a person's contributions in any election report filing period aggregate more than \$50, the account shall include occupation and the principal place of business, if any, and, if such person is a member of a candidate's immediate family as defined in section 1395, subsection 1, the account shall state such relationship. For purposes of this paragraph, "filing period" is as provided in section 1397, subsection 4, paragraph A;

Sec. 2. 21 MRSA § 1397, sub-§ 4, ¶A, last sentence, as enacted by PL 1977, c. 575, § 13, is repealed and the following enacted in its place:

Other reports shall be complete for the filing period. A filing period is that period of time from one completion date to the next completion date except as provided heretofore for first reports.

Sec. 3. 21 MRSA § 1397, sub-§ 4, ¶C, as enacted by PL 1977, c. 575, § 13, is repealed and the following enacted in its place:

C. Reports shall be filed not later than 5 p.m. on the 42nd day after the date on which an election is held and shall be complete for the filing period.

Sec. 4. 21 MRSA § 1397, sub-§ 6, as last repealed and replaced by PL 1977, c. 575, § 13, is amended to read:

6. Content. A report required under this section shall contain the itemized

P.L. 1993, ch. 719, effective July 14, 1994

(1) The name of any domestic corporation or limited partnership or limited liability company organized under the laws of this State or any foreign corporation or foreign limited partnership or foreign limited liability company authorized to transact business or to carry on activities in this State;

(2) A name the exclusive right to which is, at the time, reserved under section 404 or 604; Title 13-A, section 302; or Title 13-B, section 302;

(3) A name that is registered under section 406 or 606; Title 13-A, section 303; or Title 13-B, section 303;

(4) The assumed name of a corporation or limited partnership or limited liability company as provided in section 405 or 605; Title 13-A, section 307; or Title 13-B, section 308; or

(5) A mark registered under Title 10, chapter 301-A.

Sec. B-10. 36 MRSA §4641-C, sub-§15, as enacted by PL 1993, c. 398, §4, is amended to read:

C. From a trustee, nominee or straw party to the beneficial owner; and

Sec. B-11. 36 MRSA §4641-C, sub-§16, as enacted by PL 1993, c. 398, §4, is amended to read:

16. **Certain corporate, partnership and limited liability company deeds.** Deeds between a family corporation, partnership or, limited partnership or limited liability company and its stockholders or, partners or members for the purpose of transferring real property in the organization, dissolution or liquidation of the corporation, partnership or, limited partnership or limited liability company under the laws of this State, provided that if the deeds are given for no actual consideration other than shares, interests or debt securities of the corporation, partnership or, limited partnership or limited liability company. For purposes of this subsection a family corporation, partnership or, limited partnership or limited liability company is a corporation, partnership or, limited partnership or limited liability company in which the majority of the voting stock of the corporation, or of the interests in the partnership or, limited partnership or limited liability company is held by and the majority of the stockholders or, partners or members are persons related to each other, including by adoption, as descendants or as spouses of descendants of a common ancestor who was also a transferor of the

real property involved, or persons acting in a fiduciary capacity for persons so related; and

Sec. B-12. 36 MRSA §4641-C, sub-§17 is enacted to read:

17. **Limited liability company deeds.** Deeds to a limited liability company from a corporation, a general or limited partnership or another limited liability company, when the grantor or grantee owns an interest in the limited liability company in the same proportion as the grantor's or grantee's interest in or ownership of the real estate being conveyed.

Sec. B-13. **Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1994-95

SECRETARY OF STATE, DEPARTMENT OF THE

Bureau of Administrative Services and Corporations

All Other

\$7,500

Provides funds for ongoing printing, postage and one-time software design costs to implement the establishment of limited liability corporations.

See title page for effective date.

CHAPTER 719

S.P. 665 - L.D. 903

An Act to Bring the Department of the Attorney General into Conformity with the Criminal History Record Information Laws

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §200-D, as enacted by PL 1975, c. 715, §1, is repealed.

Sec. 2. 10 MRSA §1109, sub-§4, as enacted by PL 1989, c. 750, is amended to read:

4. **Confidentiality.** Information received by the Department of the Attorney General as a result of this

rting requirement is a confidential investigative under Title 5, section 200-D.

c. 3. 10 MRSA §1675, as enacted by PL 1, c. 836, §3, is amended to read:

75. Confidentiality

Information received by the Department of the Attorney General pursuant to sections 1673 and 1674 constitutes a is confidential investigative record under ~~200-D~~, section 200-D.

Sec. 4. 10 MRSA §8003-B, sub-§3, as enacted by PL 1989, c. 173, is amended to read:

3. **Attorney General records.** The provision disclosure of investigative records of the Department of the Attorney General to a departmental employee designated by the commissioner or to a complaint officer of a board or commission does not constitute a waiver of the confidentiality, ~~provided~~ under Title 5, section 200-D, of those records for any other purposes. Further disclosure of those investigative records ~~shall be~~ is subject to Title 16, section 614 the discretion of the Attorney General.

Sec. 5. 16 MRSA §611, sub-§4, as enacted by PL 1979, c. 433, §2, is amended to read:

4. **Criminal justice agency.** "Criminal justice agency" means a federal, state, district, county or local government agency or any subunit thereof which performs the administration of criminal justice under a statute or executive order, and which that constitutes a substantial part of its annual budget to the administration of criminal justice. Courts ~~shall be deemed to be~~ and the Department of the Attorney General are considered criminal justice agencies.

Sec. 6. 16 MRSA §611, sub-§8, as amended by PL 1983, c. 787, §1, is further amended to read:

8. **Intelligence and investigative information.** "Intelligence and investigative information" means information collected by criminal justice agencies or the direction of criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, including operation plans of the collecting agency or another agency, or information compiled in the course of investigation of known or suspected crimes, civil violations and prospective and pending civil actions. If "Intelligence and investigative information" does not include information that is minimal history record information.

Sec. 7. 16 MRSA §614, sub-§1, as repealed and replaced by PL 1993, c. 376, §1, is repealed and the following enacted in its place:

1. Limitation on dissemination of intelligence and investigative information. Reports or records that contain intelligence and investigative information and that are prepared by, prepared at the direction of or kept in the custody of a local, county or district criminal justice agency: the Bureau of State Police; the Department of the Attorney General; the Maine Drug Enforcement Agency; the Office of State Fire Marshal; the Department of Corrections; or the criminal law enforcement units of the Department of Marine Resources or the Department of Inland Fisheries and Wildlife are confidential and may not be disseminated if there is a reasonable possibility that public release or inspection of the reports or records would:

A. Interfere with law enforcement proceedings;

B. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;

C. Constitute an unwarranted invasion of personal privacy;

D. Disclose the identity of a confidential source;

E. Disclose confidential information furnished only by the confidential source;

F. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;

G. Disclose investigative techniques and procedures or security plans and procedures not generally known by the general public;

H. Endanger the life or physical safety of any individual, including law enforcement personnel;

I. Disclose conduct or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General;

J. Disclose information designated confidential by some other statute; or

K. Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.

Sec. 8. 16 MRSA §621, as amended by PL 1993, c. 376, §2, is repealed.

Sec. 9. 16 MRSA §623 is enacted to read:

§623. Attorney General fees

The Attorney General shall analyze the impact of this conformity provision upon the Department of the Attorney General. The Department of the Attorney General shall submit a report to the joint standing committee of the Legislature having jurisdiction over judiciary matters to the First Regular Session of the 117th Legislature on this analysis and recommend a funding mechanism. The funding mechanism must include a fee for services to cover the costs associated with providing access and copying of records available to the public under this chapter.

Sec. 10. 22 MRSA §1885, sub-§1, as enacted by PL 1991, c. 814, §1, is amended to read:

1. **Investigative powers.** The Attorney General, at any time after an application is filed under section 1883, subsection 2, may require by subpoena the attendance and testimony of witnesses and the production of documents in Kennebec County or the county in which the applicants are located for the purpose of investigating whether the cooperative agreement satisfies the standards set forth in section 1883, subsection 4. All documents produced and testimony given to the Attorney General are investigative records under Title 5, section 200-D confidential. The Attorney General may seek an order from the Superior Court compelling compliance with a subpoena issued under this section.

Sec. 11. **Effect of repeal of Maine Revised Statutes, Title 5, section 200-D.** Reports and records that were created prior to the effective date of this Act that were confidential pursuant to the Maine Revised Statutes, Title 5, section 200-D at the time of their creation continue to be confidential after the effective date of this Act as provided in former Title 5, section 200-D. The confidentiality of intelligence and investigative information contained in reports and records prepared by or at the direction of the Department of the Attorney General after the effective date of this Act is governed by Title 16, section 614.

Sec. 12. **Effective date.** This Act takes effect July 1, 1995, except that that section of this Act that enacts the Maine Revised Statutes, Title 16, section 623 takes effect 90 days after adjournment of the Second Regular Session of the 116th Legislature.

Effective July 1, 1995, unless otherwise indicated.

CHAPTER 720

H.P. 1080 - L.D. 1446

An Act to Establish an Ambient Water Toxics Program

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §420-B is enacted to read:

§420-B. Surface water ambient toxic monitoring program

The discharge of pollutants from certain direct and indirect sources into the State's waters introduces toxic substances, as defined under section 420, into the environment. In order to determine the nature, scope and severity of toxic contamination in the surface waters and fisheries of the State, the commissioner shall conduct a scientifically valid monitoring program.

The program must be designed to comprehensively monitor the lakes, rivers and streams and marine and estuarine waters of the State on an ongoing basis. The program must incorporate testing for suspected toxic contamination in biological tissue and sediment, may include testing of the water column and must include biomonitoring and the monitoring of the health of individual organisms that may serve as indicators of toxic contamination. This program must collect data sufficient to support assessment of the risks to human and ecological health posed by the direct and indirect discharge of toxic contaminants.

1. **Development of monitoring plans and work programs.** The commissioner shall:

A. Prepare a plan every 5 years that outlines the monitoring objectives for the following 5 years, resources to be allocated to those objectives and a plan for conducting the monitoring, including methods, scheduling and quality assurance; and

B. Prepare a work program each year that defines the work to be conducted that year toward the objectives of the 5-year plan. This work program must identify specific sites, the sampling media and the contaminants that will be tested.

(1) The commissioner shall consider the following factors when selecting monitoring sites for the annual work program:

(a) The importance of the water body to fisheries, wildlife and humans;

An Act to Amend the Laws Relating to Criminal History Record Information and Investigative Information
Proposed to be submitted by the Criminal Law Advisory Commission
Part 2

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
<p>Sec. 3 16 MRSA c. 3, sub-c 11 is enacted to read</p> <p align="center"><u>SUBCHAPTER 11</u></p> <p align="center"><u>INTELLIGENCE AND INVESTIGATIVE INFORMATION ACT</u></p> <p><u>§671. Definitions</u></p> <p>As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.</p> <p><u>1. Administration of criminal justice.</u> “Administration of criminal justice” means activities relating to the anticipation, prevention, detection, monitoring or investigation of known or suspected crimes. It includes the collection, storage and dissemination of intelligence and investigative information relating to the administration of criminal justice.</p> <p><u>2. Administration of civil justice.</u> “Administration of civil justice” means activities relating to the anticipation, prevention, detection, monitoring or investigation of known or suspected civil violations, traffic infractions, juvenile crimes and prospective and pending civil actions. It</p>	<p><u>§611 1. Administration of criminal justice.</u> “Administration of criminal justice” means detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage and dissemination of criminal history record information.</p>	<p align="right"><i>New</i></p>

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
<p>includes the collection, storage and dissemination of intelligence and investigative information relating to the administration of civil justice.</p>		
<p><u>3. Criminal justice agency.</u> "Criminal justice agency" means a government agency or any subunit of a government agency that performs the administration of criminal justice or the administration of civil justice pursuant to a statute or executive order. Maine courts and courts in any other jurisdiction are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of the Canadian government and any federally recognized Indian tribe.</p>	<p>§611 4. Criminal justice agency. "Criminal justice agency" means a federal, state, district, county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.</p>	
<p><u>4. Dissemination.</u> "Dissemination" means the transmission of information by any means, including but not limited to, orally, in writing or electronically, by or to anyone outside the agency that maintains the information.</p>	<p>§611 6. Dissemination. "Dissemination" means the transmission of information, whether orally, in writing or by electronic means by or to anyone outside the agency which maintains the information.</p>	
<p><u>5. Executive order.</u> "Executive order" means an order of the President of the United States or the chief executive of a state that has the force of law and that is published in a manner permitting regular public access.</p>	<p>§611 7. Executive order. "Executive order" means an order of the President of the United States or the chief executive of a state which has the force of law and which is published in a manner permitting regular public access thereto.</p>	
<p><u>6. Intelligence and investigative information.</u> "Intelligence and investigative information" means information of record collected by a criminal justice agency or at the direction of a criminal justice agency while performing the administration of criminal justice</p>	<p>§611 8. Intelligence and investigative information. "Intelligence and investigative information" means information collected by criminal justice agencies or at the direction of criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity,</p>	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
<p>or the administration of civil justice. The term also includes information of record concerning security plans and procedures and investigative techniques and procedures prepared or collected by a criminal justice agency or another agency. "Intelligence and investigative information" does not include criminal history record information as defined in section 652, and does not include information of record collected to anticipate, prevent or monitor possible juvenile crime activity or information compiled in the course of investigation of known or suspected juvenile crimes to the extent addressed in the Maine Juvenile Code.</p> <p><u>7. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Island, Guam and America Samoa. It also includes the federal government of Canada and any provincial government of Canada and any federally recognized Indian tribe.</u></p> <p><u>8. Statute. "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.</u></p> <p><u>§672. Application</u></p> <p><u>This subchapter applies to a record that is or contains intelligence and investigative information and that is prepared by, prepared at the direction of or kept in the custody of any Maine criminal justice agency.</u></p>	<p>including operation plans of the collecting agency or another agency, or information compiled in the course of investigation of known or suspected crimes, civil violations and prospective and pending civil actions. "Intelligence and investigative information" does not include information that is criminal history record information.</p>	
<p><u>7. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Island, Guam and America Samoa. It also includes the federal government of Canada and any provincial government of Canada and any federally recognized Indian tribe.</u></p>	<p>§611 11. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.</p>	
<p><u>8. Statute. "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.</u></p>	<p>§611 12. Statute. "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.</p>	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
<p><u>§673. Limitation on dissemination of intelligence and investigative information</u></p> <p>Except as provided in section 674, a record that contains intelligence and investigative information is confidential and may not be disseminated to any person or public or private entity if there is a reasonable possibility that public release or inspection of the report or record would:</p>	<p><u>§614 1. Limitation on dissemination of intelligence and investigative information.</u></p> <p>Reports or records that contain intelligence and investigative information and that are prepared by, prepared at the direction of or kept in the custody of a local, county or district criminal justice agency; the Bureau of State Police; the Department of the Attorney General; the Maine Drug Enforcement Agency; the Office of State Fire Marshal; the Department of Corrections; the criminal law enforcement units of the Department of Marine Resources, the Department of Inland Fisheries and Wildlife or the Department of the Secretary of State, Bureau of Motor Vehicles, office of investigations (<i>added by PL 2011, c. 356, effective September 28, 2011</i>); or the Department of Conservation, Division of Forest Protection when the reports or records pertain to arson; or the Department of Agriculture, Food and Rural Resources when the reports or records pertain to animal cruelty (<i>added by PL 2011, c. 210, effective September 28, 2011</i>) are confidential and may not be disseminated if there is a reasonable possibility that public release or inspection of the reports or records would:</p>	<p><i>The list of agencies is not needed because of new §672</i></p>
<p><u>1. Interfere. Interfere with law enforcement proceedings relating to crimes, civil violations, traffic infractions, juvenile crimes or civil actions;</u></p>	<p>A. Interfere with law enforcement proceedings;</p>	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
<p><u>2. Result in dissemination of prejudicial information.</u> Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury.</p>	<p>B. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;</p>	
<p><u>3. Constitute an invasion of privacy.</u> Constitute an unwarranted invasion of personal privacy;</p>	<p>C. Constitute an unwarranted invasion of personal privacy;</p>	
<p><u>4. Disclose confidential source.</u> Disclose the identity of a confidential source;</p>	<p>D. Disclose the identity of a confidential source;</p>	
<p><u>5. Disclose confidential information.</u> Disclose confidential information furnished only by the confidential source;</p>	<p>E. Disclose confidential information furnished only by the confidential source;</p>	
<p><u>6. Disclose trade secrets.</u> Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;</p>	<p>F. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;</p>	
<p><u>7. Disclose investigative techniques, security plans.</u> Disclose investigative techniques and procedures or security plans and procedures not generally known by the general public;</p>	<p>G. Disclose investigative techniques and procedures or security plans and procedures not generally known by the general public;</p>	
<p><u>8. Endanger law enforcement or others.</u> Endanger the life or physical safety of any individual, including law enforcement personnel;</p>	<p>H. Endanger the life or physical safety of any individual, including law enforcement personnel;</p>	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
<p><u>9. Disclose arbitration or mediation information.</u> Disclose conduct or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General;</p>	<p>I. Disclose conduct or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General;</p>	
<p><u>10. Statutorily confidential information.</u> Disclose information designated confidential by another statute; or</p>	<p>J. Disclose information designated confidential by some other statute; or</p>	
<p><u>11. Identify sources of consumer or antitrust complaints.</u> Identify the source of the complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.</p>	<p>K. Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.</p>	
<p><u>§674. Exceptions</u></p> <p>Nothing in this subchapter precludes dissemination of intelligence and investigative information by a Maine criminal justice agency to:</p> <p><u>1. Another criminal justice agency.</u> Another criminal justice agency;</p> <p><u>2. A government agency or subunit statutorily responsible for investigating child or adult abuse, neglect or exploitation.</u> A government agency or subunit of a government agency that pursuant to statute is responsible for investigating abuse, neglect or exploitation of children [under Title 22, chapter 1071] or incapacitated or dependent adults [under Title 22, chapter 958-A] for use in the investigation of suspected abuse, neglect or exploitation, subject to reasonable limitations to protect the interests</p>	<p><u>§614 3. Exceptions.</u> Nothing in this section precludes dissemination of intelligence and investigative information to:</p> <p>A. Another criminal justice agency;</p> <p>B. A state agency responsible for investigating abuse, neglect or exploitation of children under Title 22, chapter 1071 or incapacitated or dependent adults under Title 22, chapter 958-A for use in the investigation of suspected abuse, neglect or exploitation;</p>	<p><i>Limited disclosure</i></p>

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
described in section 673:		
<p>3. An accused person or that person's agent or attorney. A person accused of a crime or that person's agent or attorney for trial purposes if authorized by:</p>	C. An accused person or that person's agent or attorney if authorized by:	
<p>A. <u>The responsible prosecutorial office or prosecutor; or</u></p>	(1) The district attorney for the district in which that accused person is to be tried;	
<p>B. <u>A court rule or court order.</u></p>	(2) A rule or ruling of a court of this State or of the United States; or	
<p>As used in this subsection "agent" means a licensed private investigator, an expert witness, or a parent, foster parent or guardian if the accused person has not attained 18 years of age;</p>	(3) The Attorney General;	
<p>4. A crime victim or that victim's agent or attorney. A crime victim or that victim's agent or attorney, subject to reasonable limitations to protect the interests described in section 673. As used in this subsection "agent" means a licensed private investigator, or immediate family if due to death, age, physical or mental disease, disorder or defect, the victim cannot realistically act in the victim's own behalf;</p>	D. A victim or victim's agent or attorney, subject to reasonable limitations to protect the interest described in subsection 1; or	
<p>5. A counselor or advocate. A sexual assault counselor, as defined in section 53-A, subsection 1, paragraph B, or an advocate, as</p>	E. An advocate, as defined in section 53-B, subsection 1, paragraph A, with a specific agreement with a criminal justice	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
<p>defined in section 53-B, subsection 1, paragraph A, with a specific agreement with a criminal justice agency and subject to reasonable limitations to protect the interests described in section 673. An agreement between an advocate and a criminal justice agency must, at a minimum, include provisions that:</p>	<p>agency and subject to reasonable limitations to protect the interests described in subsection 1. An agreement between an advocate and a criminal justice agency must, at a minimum, include provisions that:</p>	
<p>A. <u>Permit the advocate to use reports or records that contain intelligence and investigative information for the purpose of planning for the safety of the victim named in the reports;</u></p>	<p>(1) Permit the advocate to use reports or records that contain intelligence and investigative information for the purpose of planning for the safety of the victim named in the reports;</p>	
<p>B. <u>Prohibit the advocate from further disseminating reports or records that contain intelligence and investigative information;</u></p>	<p>(2) Prohibit the advocate from further disseminating reports or records that contain intelligence and investigative information;</p>	
<p>C. <u>Require the advocate to ensure that reports or records that contain intelligence and investigative information remain secure and confidential;</u></p>	<p>(3) Require the advocate to ensure that reports or records that contain intelligence and investigative information remain secure and confidential;</p>	
<p>D. <u>Require the advocate to destroy reports or records that contain intelligence and investigative information within 30 days after receiving the report or record;</u></p>	<p>(4) Require the advocate to destroy reports or records that contain intelligence and investigative information within 30 days after receiving the report or record;</p>	
<p>E. <u>Permit the criminal justice agency to</u></p>	<p>(5) Permit the criminal justice</p>	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
<p>perform reasonable and appropriate audits in order to ensure that records containing intelligence and investigative information that are obtained by and that are in the custody of the advocate are maintained in accordance with the requirements of this subsection;</p>	<p>agency to perform reasonable and appropriate audits in order to ensure that records containing intelligence and investigative information that are obtained by and that are in the custody of the advocate are maintained in accordance with the requirements of this paragraph;</p>	
<p>F. Require the advocate to indemnify and hold harmless the criminal justice agency with respect to any litigation that may result from the provision of reports or records that contain intelligence and investigative information;</p>	<p>(6) Require the advocate to indemnify and hold harmless the criminal justice agency with respect to any litigation that may result from the provision of reports or records that contain intelligence and investigative information;</p>	
<p>G. Permit a criminal justice agency to immediately and unilaterally revoke an agreement made pursuant to this subsection; and</p>	<p>(7) Permit the criminal justice agency to immediately and unilaterally revoke an agreement made pursuant to this paragraph; and</p>	
<p>H. Provide sanctions for any violations of this subsection.</p> <p>The Commissioner of Public Safety may adopt a model policy to standardize the provisions contemplated in this subsection; or</p>	<p>(8) Provide sanctions for any violations of this paragraph.</p> <p>The Commissioner of Public Safety may adopt a model policy to standardize the provisions contemplated in this paragraph.</p>	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
<p>ALTERNATIVE A</p> <p><u>6. A government agency or subunit statutorily responsible for licensing entities or individuals that provide healthcare or social services. A government agency or subunit of a government agency that pursuant to statute is responsible for licensing entities or individuals that provide healthcare or social services for use in the investigation of potential violations of laws enforced by the government agency or subunit subject to reasonable limitations to protect the interests described in section 673.</u></p>	<p>B-1. The division of licensing and regulatory services within the Department of Health and Human Services for use in the investigation of suspected abuse, neglect or exploitation in licensed, certified and registered facilities and programs that provide care to children and adults; <i>(added by PL 2011, c. 52, effective July 1, 2011)</i></p>	<p><i>Question (not for RTK AC) about whether to write this exception broadly to cover just healthcare and social services providers</i></p>
<p>ALTERNATIVE B</p> <p><u>6. A government agency or subunit statutorily responsible for licensing individuals who engage in a particular occupation or social services. A government agency or subunit of a government agency that pursuant to statute is responsible for licensing individuals who engage in a particular occupation or social services for use in the investigation of potential violations of laws enforced by the government agency or subunit subject to reasonable limitations to protect the interests described in section 673.</u></p>		<p><i>or all licensed occupations</i></p>
<p>§ ____ Prohibition against release of identifying information of those providing information as to cruelty to animals. The names of and other identifying information on persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Food and Rural Resources is confidential information and may not be disseminated.</p>	<p>1-A. Limitation on release of identifying information; cruelty to animals. The names of and other identifying information on persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Food and Rural Resources is confidential information and may not be disseminated.</p>	<p><i>Move to Title 7 with Animal Welfare/Animal Cruelty statutes</i></p>

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
<p>Note: CLAC voted not to include this proposed section. It would logically go here if the decision was made to add it. CLAC believes this provision, making confidential identifying information under these circumstances, more properly belongs as part of a Department statute expressly addressing persons being encouraged to provide information to the Department pertaining to criminal or civil cruelty to animals.</p>		
<p><u>§675. Restriction on use of disseminated intelligence and investigative information</u></p> <p>Intelligence and investigative information that is disseminated to a person or public or private entity that is not a criminal justice agency under section 671 may be used solely for the purpose for which it was disseminated and may not be disseminated further.</p>		
<p><u>§ 676. Confirming existence or nonexistence of intelligence and investigative information</u></p> <p>Except as provided in section 673 and 674, a criminal justice agency to whom this subchapter applies may not confirm the existence or nonexistence of intelligence and investigative information to any person or public or private entity that is not eligible to receive the information itself.</p>		
<p><u>§677. No right to access or review</u></p>	<p>§620. Right to access and review</p>	

PROPOSED	CURRENT LAW	Comments on confidentiality provisions
<p>A person who is the subject of intelligence and investigative information maintained by a criminal justice agency has no right to inspect or review that information for accuracy or completeness.</p>	<p>1. Inspection. Any person or his attorney may inspect the criminal history record information concerning him maintained by a criminal justice agency. A person's right to inspect or review criminal history record information shall not include access to intelligence and investigative information or any other information which is not criminal history record information. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary. These restrictions shall be to insure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The agency shall supply the person or his attorney with a copy of the criminal history record information pertaining to him on request and payment of a reasonable fee.</p>	
<p>§ 678. Unlawful dissemination of intelligence and investigative information</p> <p>1. Offense. A person is guilty of unlawful dissemination of intelligence and investigative information if the person intentionally disseminates intelligence and investigative information knowing it to be in violation of any of the provisions of this subchapter.</p>	<p>§614 4. Unlawful dissemination of reports or records that contain intelligence and investigative information. A person that intentionally disseminates a report or record that contains intelligence and investigative information in violation of this section commits a Class E crime.</p>	
<p>2. Classification. Unlawful dissemination of intelligence and investigative information is a Class E crime.</p>		<p>G:\STUDIES 2011\Right to Know Advisory Committee\CHRIA\III sbs 11-7-11.doc (11/7/2011 11:35:00 AM)</p>

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
§408. Public records available for public inspection and copying	44-04-18. Access to public records - Electronically stored information.	§408. Public records available for public inspection and copying	Repeal §408 Enact new §408-A, Public records available for inspection and copying
<p>1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within a reasonable period of time after making a request to inspect or copy the public record. An agency or official may request clarification concerning which public record or public records are being requested, but in any case the agency shall acknowledge receipt of the request within a reasonable period of time.</p>	<p>1. Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours. As used in this subsection, "reasonable office hours" includes all regular office hours of a public entity. If a public entity does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the public entity's records must be posted on the door of the office of the public entity, if any. Otherwise, the information regarding the contact person must be filed with the secretary of state for state-level entities, for public entities defined in subdivision c of subsection 12 of section 44-04-17.1, the city</p>	<p>1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within a reasonable period of time after making a request to inspect or copy the public record the time limits established in section 408-A. An agency or official may request clarification concerning which public record or public records are being requested.</p> <p>2. Clarification. An agency or official may request clarification concerning which public record or public records are being requested.</p> <p>3. Acknowledgment; time estimate. The agency or official shall acknowledge receipt of the request within a reasonable period of time, and shall provide an estimate of the time within which the agency or official will comply with the request.</p> <p>4. Refusals; denials. If any body or agency or official who has</p>	<p>1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record within a reasonable time of making the request to inspect or copy.</p> <p>2. Clarification. An agency or official may request clarification concerning which public record or public records are being requested.</p> <p>3. Acknowledgment; time estimate. The agency or official shall acknowledge receipt of the request within a reasonable period of time, and shall provide an estimate of the time within which the agency or official will comply with the request.</p> <p>4. Refusals; denials. If any body or agency or official who has</p>

LD 1465 #1

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
	auditor or designee of the city for city-level entities, or the county auditor or designee of the county for other entities.		<p>custody or control of any public record refuses permission to inspect or copy or abstract a public record, this denial must be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection or copying by any person. <i>[Currently part of §409, sub-§1]</i></p> <p>5. Schedule. Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought. <u>As used in this section, "reasonable office hours" includes all regular office hours of an agency or official. If a the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted on the door of the office of the agency or official, if any.</u></p>

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
			<p>6. Inspect. A person may inspect any public record during reasonable office hours. An agency or official may not charge for inspection.</p> <p>7. Copy. A person may copy a public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy.</p> <p>A. A request need not be made in person or in writing.</p> <p>B. The agency or official shall mail the copy upon request.</p>
<p>2. Inspection, translation and copying scheduled. Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public</p>		<p>2. Inspection, translation and copying scheduled. Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public</p>	

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
record sought.		record sought, as long as the inspection, translation and copying occur within the time limits established in section 408-A. <u>The agency or official may use a 3rd party to make a copy of an original public record, but a requester may not remove the original of a public record from the agency or official.</u>	
	<p>4. Except as provided in this subsection, nothing in this section requires a public entity to create or compile a record that does not exist.</p> <p>Access to an electronically stored record under this section, or a copy thereof, must be provided at the requester's option in either a printed document or through any other available medium. A computer file is not an available medium if no means separate or prevent the disclosure of any closed or confidential information contained in that file.</p>	<p>2-A. Form. If a public record exists in electronic or magnetic form, the requester may request a copy of the public record in a paper, electronic, magnetic or other medium, specify the storage medium and request that the copy be provided by an electronic transfer by the Internet or other means.</p> <p>A. <u>An agency or official shall</u></p>	<p>8. Compile or create. <u>An agency or official is not required to create or compile a record that does not exist.</u></p> <p>9. Available medium. <u>Access to an electronically stored record under this section, or a copy of such a record, must be provided at the requester's option in either a printed document or through any other available medium. A computer file is not an available medium if no means exist to separate or prevent the disclosure of any closed or confidential information contained in that file.</u></p>

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
	<p>Except as reasonably necessary to reveal the organization of data contained in an electronically stored record, a public entity is not required to provide an electronically stored record in a different structure, format, or organization.</p> <p>This section does not require a public entity to provide a requester with access to a computer terminal.</p>	<p><u>provide a copy of the public record in the requested medium if:</u></p> <p>(1) <u>The agency or official has the technological ability to produce the public record in that medium or can obtain the assistance necessary to produce the public record at a reasonable cost; and</u></p> <p>(2) <u>The requester agrees to pay the agency's or official's costs to purchase and install any additional necessary computer software or hardware to accommodate the request and to copy the public record in a requested medium.</u></p> <p>B. <u>If an agency or official cannot provide a copy of a public record in a requested</u></p>	<p>A. <u>Except as reasonably necessary to reveal the organization of data contained in an electronically stored record, a public entity is not required to provide an electronically stored record in a different structure, format or organization.</u></p> <p>B. <u>This section does not require a public entity to provide a requester with access to a computer terminal.</u></p>

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
		medium, the agency or official shall identify every medium in which the public record can be provided for inspection and copying, which must include a paper copy, and the requester must identify the medium that is acceptable to the requester.	
<p>3. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees as follows.</p>	<p>2. Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested.</p> <p>A request need not be made in person or in writing, and the copy must be mailed upon request.</p>	<p>3. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees as follows.</p>	<p>10. Payment of costs. (Except as otherwise specifically provided by law or court order, - see ¶(G; need both?)) an agency or official having custody of a public record may charge fees for copies of public records as follows.</p>
<p>A. The agency or official may charge a reasonable fee to cover the cost of copying.</p>	<p>A public entity may charge up to twenty-five cents per impression of a paper copy. As used in this section, "paper copy" means a one-sided or two-sided duplicated copy of a size not more than eight and one-half by fourteen inches</p>	<p>A. The agency or official may charge a reasonable fee to cover the cost of copying.</p>	<p>A. The agency or official may charge a reasonable fee to cover the cost of copying. <u>As used in this section, "reasonable fee" means the actual cost to the agency or</u></p>

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
	<p>[19.05 by 35.56 centimeters].</p> <p>For any copy of a record that is not a paper copy as defined in this section, the public entity may charge a reasonable fee for making the copy. As used in this section, "reasonable fee" means the actual cost to the public entity of making the copy, including labor, materials, and equipment. The entity may charge for the actual cost of postage to mail a copy of a record. An entity may require payment before locating, redacting, making, or mailing the copy.</p>		<p>official of making the copy, including:</p> <p>(1) Labor;</p> <p>(2) Materials; and</p> <p>(3) Equipment.</p>
<p>B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$10 per hour after the first hour of staff time per request. Compiling the public record reviewing and redacting</p>	<p>An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records, including electronic records, if locating the records requires more than one hour.</p> <p>An entity may impose a fee not exceeding twenty-five dollars per</p>	<p>B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$10 per hour after the first hour of staff time per request. Compiling the public record reviewing and redacting confidential</p>	<p>B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$10 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential</p>

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
confidential information.	<p>hour per request, excluding the initial hour, for excising confidential or closed material under section 44-04-18.10 from the records, including electronic records.</p> <p>If the entity is not authorized to use the fees to cover the cost of providing or mailing the copy, or both, or if a copy machine is not readily available, the entity may make arrangements for the copy to be provided or mailed, or both, by another entity, public or private, and the requester shall pay the fee to that other entity.</p>	information.	information.
C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation.		C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation.	E. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation.
D. An agency or official may not charge for inspection.		D. An agency or official may not charge for inspection.	D. An agency or official may not charge for inspection. <i>(included in subsection 4 – need</i>

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
			<i>both?)</i>
	The entity may charge for the actual cost of postage to mail a copy of a record. An entity may require payment before locating, redacting, making, or mailing the copy.	<u>E. If the requester requests that the public record be mailed, the agency or official may charge a fee not greater than the actual cost of mailing the record.</u>	<u>F. The agency or official may charge for the actual cost of postage to mail a copy of a record.</u>
	This subsection does not apply to copies of public records for which a different fee is specifically provided by law.		<u>G. This subsection does not apply to copies of public records for which a different fee is specifically provided by law. (need this?)</u>
4. Estimate. The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than \$20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 5 applies.		4. Estimate. The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than \$20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 5 applies and the estimate must be provided within 3 business	11. Estimate. The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than \$20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 12 applies.

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Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
		<u>days of the request.</u>	
<p>5. Payment in advance. The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if:</p>	<p>(subsection 1) <i>An entity may require payment before locating, redacting, making, or mailing the copy.</i></p>	<p>5. Payment in advance. The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if:</p>	<p>12. Payment in advance. The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if:</p>
<p>A. The estimated total cost exceeds \$100; or</p>		<p>A. The estimated total cost exceeds \$100; or</p>	<p>A. The estimated total cost exceeds \$100; or</p>
<p>B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.</p>		<p>B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.</p>	<p>B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.</p>
<p>6. Waivers. The agency or official may waive part or all of the total fee if:</p>		<p>6. Waivers. The agency or official may waive part or all of the total fee if:</p>	<p>13. Waivers. The agency or official may waive part or all of the total fee if:</p>
<p>A. The requester is indigent;</p>		<p>A. The requester is indigent; or</p>	<p>A. The requester is indigent; or</p>

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Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
or			
B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.		B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.	B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.
	3. Automation of public records must not erode the right of access to those records. As each public entity increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law. A public entity may not enter into a contract for the creation or maintenance of a public records		<u>§408-B. Automation of public records.</u> <u>1. Right of access; protection of confidential records.</u> <u>Automation of public records may not erode the right of access to those records. As each agency or official increases the use of and dependence on electronic recordkeeping, each agency shall provide reasonable public access to records electronically maintained and shall ensure that confidential records are not disclosed except as otherwise</u>

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
	<p>database if that contract impairs the ability of the public to inspect or copy the public records of the agency, including public records online or stored in an electronic recordkeeping system used by the agency. An electronic copy of a record must be provided upon request at no cost, other than costs allowed in subsection 2, except if the nature or volume of the public records requested to be accessed or provided requires extensive use of information technology resources, the agency may charge no more than the actual cost incurred for the extensive use of information technology resources incurred by the public entity.</p> <p>"Extensive" is defined as a request for copies of electronic records which take more than one hour of information technology resources to produce.</p>		<p>permitted by law.</p> <p>2. Contracts. A public entity may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of the agency, including public records online or stored in an electronic recordkeeping system used by the agency.</p> <p>3. Cost of electronic copy. An electronic copy of a record must be provided upon request at no cost, other than costs allowed in section 408-A, subsection 10, except if the nature or volume of the public records requested to be accessed or provided requires extensive use of information technology resources, the agency may charge no more than the actual cost incurred for the extensive use of information technology resources incurred by the public entity. "Extensive" is defined as a request for copies of electronic</p>

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CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
			records which take more than one hour of information technology resources to produce.
	5. A state-level public entity as defined in subdivision a of subsection 12 of section 44-04-17.1 or a political subdivision as defined in subsection 10 of section 44-04-17.1, may establish procedures for providing access from an outside location to any computer database or electronically filed or stored information maintained by that entity. The procedures must address the measures that are necessary to maintain the confidentiality of information protected by federal or state law. Except for access provided to another state-level public entity or political subdivision, the state or political subdivision may charge a reasonable fee for providing that outside access. If the original information is keyed, entered, provided, compiled, or submitted		

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Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
	by any political subdivision, the fees must be shared by the state and the political subdivision based on their proportional costs to make the data available.		
	6. Any request under this section for records in the possession of a public entity by a party to a criminal or civil action, adjudicative proceeding as defined in subsection 1 of section 28-32-01, or arbitration in which the public entity is a party, or by an agent of the party, must comply with applicable discovery rules or orders and be made to the attorney representing that entity in the criminal or civil action, adjudicative proceeding, or arbitration. The public entity may deny a request from a party or an agent of a party under this subsection if the request seeks records that are privileged under applicable discovery rules.		

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Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
	7. A denial of a request for records made under this section must describe the legal authority for the denial and must be in writing if requested.		
	8. This section is violated when a person's right to review or receive a copy of a record that is not exempt or confidential is denied or unreasonably delayed or when a fee is charged in excess of the amount authorized in subsections 2 and 3.		
	9. It is not an unreasonable delay or a denial of access under this section to withhold from the public a record that is prepared at the express direction of, and for presentation to, a governing body until the record is mailed or otherwise provided to a member of the body or until the next meeting of the body, whichever occurs first. It also is not an unreasonable delay or a denial of		

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
	access to withhold from the public a working paper or preliminary draft until a final draft is completed, the record is distributed to a member of a governing body or discussed by the body at an open meeting, or work is discontinued on the draft but no final version has been prepared, whichever occurs first.		
C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice memoranda used or maintained by any legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the	10. For public entities headed by a single individual, it is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, or work is discontinued on the draft but no final version has been prepared, whichever occurs first. A working paper or preliminary draft shall be deemed completed if it can reasonably be concluded, upon a good-faith review, that all substantive work on it has been completed.		<p>§402, sub-§3, ¶C-2 is enacted to read: (exceptions to "public records")</p> <p>C-2. Proposed legislation and reports until publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by the Governor or any employee of the Governor to prepare proposed legislation or</p>

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Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over;			<u>reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the proposed legislation or reports are prepared or considered or to which the proposed legislation or report is carried over;</u>
§409. Appeals			§409. Appeals
1. Records. If any body or agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, this denial must be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection by any person. Any person aggrieved by denial may appeal , within 5 working days of the receipt of the			1. Records. If any body or agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, this denial must be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection by any person. Any person aggrieved by a <u>refusal or denial to inspect or copy</u> a record under section 408-A may

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Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.			appeal , within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.
2. Actions. If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and the officials responsible are subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a			

Bulk Records Subcommittee and Legislative Subcommittee

Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus or actions brought by the State against individuals.			
3. Proceedings not exclusive. The proceedings authorized by this section are not exclusive of any other civil remedy provided by law.			
4. Attorney's fees. In an appeal under subsection 1 or 2, the court may award reasonable attorney's fees and litigation expenses to the substantially prevailing plaintiff who appealed the refusal under subsection 1 or the illegal action under subsection 2 if the court determines that the			

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Timeline and Costs: Comparison of Current Maine law, North Dakota laws, LD 1465, Possible draft

CURRENT MAINE LAW	NORTH DAKOTA LAW	LD 1465	Possible draft?
<p>refusal or illegal action was committed in bad faith. Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe. This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 2010.</p>			

G:\STUDIES 2011\Right to Know Advisory Committee\Legislative Subcommittee\Section 408 SBS with ND.doc (10/31/2011 1:04:00 PM)

Public Employees responding to FOA request: hourly/annual wages

Secretarial and clerical (hourly averages or ranges)

	Beginning step, lowest range administrative office support	Administrative office support	Secretary/clerical support	Clerk	Administrative Assistant/Executive Secretary
State of Maine	~\$10.00	\$12.16 - \$16.99 (range 12)			
School districts		\$15.88			\$19.47
Counties		\$10.28 - \$19.26		\$10.97 - 19.50	\$12.01 - \$22.55
Municipalities			\$9.50 (15 hrs) - \$20.80		\$9.13 (15 hrs) - \$26.68

Administration (hourly or annual ranges)

	Admin Asst to Selectmen	Manager/ Administrator	County Clerk	Appointed clerk	Elected clerk
Counties		\$25.75 - \$49.57	Annually: \$24,383 - \$46,850		
Municipalities	\$10.30 - \$37.06	Annually: \$34,320 - \$143,000		Min: ? Max: \$36.90	Min: ? Max: \$26.59

Information provided by State of Maine Bureau of Human Resources, Maine School Management Association, County Commissioners Association survey, Maine Municipal Association survey.

LD 1465 #2

Legislative Subcommittee

LD 1465's Public Access Officer Provision: Proposed draft language changes

Sec. 1. 1 MRSA §402, sub-§1-B is enacted to read:

1-B. Public access officer. "Public access officer" means the person designated pursuant to section 413, subsection 1.

Sec. 2. 1 MRSA §412, as amended by PL 2007, c. 576, §2, is further amended to read:

§ 412. Public records and proceedings training for certain elected officials and public access officers

1. Training required. ~~Beginning July 1, 2008, an~~ An elected official and a public access officer, subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official or officer shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official or the person is designated as a public access officer pursuant to section 413, subsection 1. ~~For elected officials subject to this section serving in office on July 1, 2008, the training required by this section must be completed by November 1, 2008.~~

2. Training course; minimum requirements. The training course under subsection 1 must be designed to be completed by an official or a public access officer in less than 2 hours. At a minimum, the training must include instruction in:

- A. The general legal requirements of this chapter regarding public records and public proceedings;
- B. Procedures and requirements regarding complying with a request for a public record under this chapter; and
- C. Penalties and other consequences for failure to comply with this chapter.

An elected official or public access officer meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.

3. Certification of completion. Upon completion of the training course required under subsection 1, the elected official or public access officer shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected. A public access officer shall file the record with the agency or official that designated the public access officer.

4. Application. This section applies to the following elected officials:

Legislative Subcommittee

LD 1465's Public Access Officer Provision: Proposed draft language changes

- A. The Governor;
- B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;
- C. Members of the Legislature elected after November 1, 2008;
- E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;
- F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;
- G. Officials of school units and school boards; and
- H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.

This section also applies to a public access officer designated pursuant to section 413, subsection 1.

Sec. 3. **1 MRSA §413** is enacted to read:

§ 413. Public access officer; responsibilities

1. Designation; responsibility. Each State agency, county and municipality shall designate an existing employee as its public access officer to serve as the contact person for that agency, county or municipality with regard to requests for public records under this chapter. *[add language about making name of contact available to public?? Need to mention that the contact person is not solely responsible for fulfilling request or that request has to be made to POA??]*

2. Training. A public access officer shall complete a course of training on the requirements of this chapter relating to public records and proceedings as described in section 412.

ESTIMATED COST FOR A FULL-TIME ASSISTANT ATTORNEY GENERAL POSITION

		Headcount	
Asistant Attorney General		1	1
		FY12	FY13
Salaries	3110 \$	44,679 \$	46,913 \$
Health Insurance	3901 \$	16,233 \$	16,233 \$
Dental	3905 \$	329 \$	329 \$
Worker's Comp	3906 \$	480 \$	480 \$
Empl Retire Health	3908 \$	3,650 \$	3,833 \$
Retirement	3910 \$	1,506 \$	1,581 \$
Group Life	3911 \$	286 \$	300 \$
Medicare	3912 \$	648 \$	680 \$
Unfunded liability	3960 \$	4,830 \$	5,071 \$
Personal Services	\$	72,640 \$	75,420 \$
Travel	4200 \$	500 \$	500 \$
Insurance	4800 \$	58 \$	58 \$
General Operating	4900 \$	500 \$	500 \$
Technology	5300 \$	3,920 \$	1,920 \$
Supplies	5600 \$	200 \$	200 \$
All Other	\$	5,178 \$	3,178 \$
Total	\$	77,818 \$	78,598 \$

Assumes buying a Laptop in FY12

AG/OPPR
10/21/11

LD 1465 #4

Reinsch, Margaret

From: Susan Bulay <sbulay@zwi.net>
Sent: Thursday, November 10, 2011 11:47 AM
To: Cianchette, Michael
Cc: Reinsch, Margaret
Subject: Registry of Deeds FOAA issues

Mr. Cianchette:

We spoke several weeks ago at the last meeting of the Bulk Sales subcommittee and I said I would get back to you with recommendations from the Registers of Deeds regarding the social security numbers appearing in our documents and how that would impact bulk sales of our records under FOAA.

The registers did not meet until this morning and I apologize for being so last minute in getting these suggestions to you.

1. Under public law chapter 320, section E, a FOAA request cannot include documents with social security numbers on them. The registers have never been clear exactly how that provision was supposed to be applied to the registries of deeds. We would like an opinion, perhaps from the AG's office, on this provision.
2. We would like the committee to come up with a definition of bulk sales. Since it is charged as a "Bulk Sales Subcommittee" we feel that that should be the first order of business. Without that definition of bulk sales and how that differs from FOAA we are at a loss on how to proceed. Bulk Sales must be a separate category from a FOAA request.
3. If we are expected to provide mass or bulk data under a FOAA request that does not include social security numbers we would need money to purchase redaction software and a change in current laws.
4. We do not feel that the members of the committee have a sufficient working knowledge of exactly how the registry works and that may be hampering them in their decisions. We would strongly encourage each member or the committee as a whole to visit a registry and get a tour of the behind the scenes action.
5. If the registries are to set our prices by rulemaking like the state agencies do, do the County Commissioners qualify to be the rulemaking body.
6. We would support an ombudsman position at the state level to answer any questions. In fact, perhaps the ombudsman could be charged with determining exceptions rather than defining each exception in statute.

I know these are quick thoughts and perhaps not completely explained. Please let me know if there are any other question I can answer and thank you for your time.

Susan F. Bulay
Penobscot Register of Deeds
97 Hammond St.
P.O. Box 2070
Bangor, ME 04402
(207)942-8797

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APRIL 12, 2011

Margaret Reinsch

Senior Legal Analyst

Judiciary Committee

Right to Know Advisory

Committee

The Maine Public Broadcasting Network is Maine's largest statewide news and public affairs organization with administrative offices and production facilities for radio and television in Lewiston, Bangor, Augusta and Portland. The station's transmitters and translators are located throughout the state delivering programs to nearly all of Maine citizens. The organization employs 119 staff members. According to the organization's IRS 990 Form ending 6/30/10, MPBN net assets were \$15,473,227. According to MPBN's own audit ending June 30, 2010 it received government support of \$1,954,235 from the State of Maine, \$1,574,366 from the Corporation for Public Broadcasting and government grants of \$33,016.

MPBN comes under the FOA Act as "the board of directors of a non-profit, non-stock private corporation that provides statewide noncommercial public broadcasting services and any

Resp. #1

of its committees and subcommittees” and as such under FOA’s public proceedings “means the transaction of any functions affecting any and all citizens of the state.”

Cove Writers, Inc. and Hometown News Service are news companies producing columns for Maine and other state’s newspapers. Hometown News Service is the longest serving continuous member of the State House Newspersons, the press corps with offices in the Cross Building. Both news organizations have as its president and chief journalist, Allen D. (Mike) Brown.

On December 15, 2010, Cove Writers, Inc. filed a FOA request to MPBN President James Dowe for certain financial information. **(See Copy Enclosed)**. A FOA request is mandated by a reply within five working days. No reply came within that period or in subsequent weeks although several attempts to reach President Dowe were futile until February 2011 with a phone call from John F. Isacke, Vice President and Chief Financial Officer which was 45 days from the original request and 40 days in violation of the FOA Act. I requested of Mr. Isacke to put his response in writing which he did with letter dated 2/3/11. **(See Copy Enclosed)**. Although certain MPBN financials were forwarded, two items (1) a copy of MPBN’s current roster of full-time employees with their job titles and ranges for pay grades, and (2) a current copy listing part-time and/or contract employees who received IRS Form 1099 including the amounts they received were omitted.

According to Mr. Isacke the two omitted items do not apply under the FOA Act.

On March 25, 2011, Cove Writers, Inc. filed a FOA to P. James Dowe, President, MPBN, requesting a copy of MPBN's IRS Form 1099-Misc. listing persons and/or companies or other individuals /entities including the amounts received. There was no response after five days. In fact, there was no response at all.

After searching the relevant history files of the FOA Act and the Right to Know Advisory Committee which was created by Public Law 2005, chapter 631, and which has the oversight and responsibility of recommending changes to the Judiciary Committee, I can find no exception that any of the requests in the original letter of December 15, 2010 to Mr. Dowe are confidential and therefore exempt as stated by Mr. Isacke.

However, if Mr. Isacke's presumption is correct, then there is a gross conflict in that although MPBN comes under FOA's "Proceedings" as Mr. Isacke admits, it does not under "Public Records." Therefore, it challenges the general purpose of the Maine FOA as "transactions of any functions affecting any and all citizens of the state" and specifically and effectively labeling all MPBN public records as confidential. Mr. Isacke did respond to requests for some information under "Public Records" but chose to withhold other information under "Public Records" therefore "picking and choosing" what public records to reveal to the public.

MPBN is Maine's only "non-profit corporation that provides statewide noncommercial public broadcasting services" and therefore specifically under Maine's Freedom of Access Act.

The Right to Know Advisory Committee should review MPBN's proprietary stance on Public Records in view of its tremendous media influence in Maine and as the recipient of nearly two million annually of taxpayer funds. If Mr. Isacke is correct then MPBN is under Maine's FOA Act in name only and escapes public access to all of its public records or whatever it chooses to reveal.

On February 17, 2011 a column bylined by Mike Brown was printed in the Ellsworth American (**See Copy enclosed**) revealing financials of MPBN ending June 2009 with the questions of MPBN's cavalier illegal time responses and why if the State of Maine taxpayers were contributing nearly \$2 million to a non-profit, private news corporation then why it did not come fully under the FOA Act?

Efforts are current and continuing to obtain full compliance from MPBN but so far it refuses to release requested information under Maine's Freedom of Information law claiming confidentiality of personnel records.

Enclosures:



Allen D. (Mike) Brown, President

Hometown News Service

State House Station 162

Augusta, ME 04333

Phone 287-4899

E-mail brown@midcoast.com

COVE WRITERS, INC.
INDEPENDENT SYNDICATION
78 CLIFF ROAD, SATURDAY COVE
NORTHPORT, MAINE 04849

TELEPHONE (207) 338-3419
FAX (207) 338-4992

December 15, 2010

Jim Dowe, President
Maine Public Broadcasting Network
1450 Lisbon Street
Lewiston, Maine

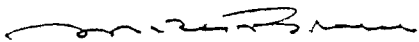
Dear Mr. Dowe:

Pursuant to Title 1, MRSA, Chap. 13, Maine's Freedom of Access Law, I am requesting the following information:

- 1.) The most recent audited financial statement of MPBC.
- 2.) A copy of MBPC's latest filed IRS 990 form.
- 3.) A copy of MPBC's current roster of full-time employees with their job titles and ranges for pay grades.
- 4.) A current copy listing MPBC's part-time and/or contract employees who received IRS Form 1099 including the amounts they received.
- 5.) The names of current MPBC Board of Trustees and their terms of office.

Thank you Mr. Dowe for your past cooperation and prompt reply to the above requests. Also if you have any comment on content and activity of your organization please include it your reply.

Sincerely,



Allen D. (Mike) Brown, President
Cove Writers, Inc.
Hometown News Service



Maine Public Broadcasting Network

1450 Lisbon Street, Lewiston, Maine 04240-3595 • 800-884-1717 • 207-783-9101 • Fax 207-783-5193

February 3, 2011

Allen D. Brown
Cove Writers, Inc.
78 Cliff Road, Saturday Cove
Northport, Maine 04849

Re: Your request of December 15, 2010

Dear Mr. Brown,

It was nice speaking with you on the phone yesterday. As I stated during our conversation, I do not believe that the items you have requested are all subject to Title 1, MRSA, Chapter 13 – Maine's Freedom of Access law. My beliefs in that regard are as follows:

- As I told you, I am not a lawyer, but my simple reading of Chapter 13 is that it pertains to Public Proceedings and to Public Records.
- With respect to Public Proceedings, the work of MPBN's Board of Directors, its committees and subcommittees are specifically included in §402 2. E. MPBN maintains a public file of all such meetings and those files are available for review, upon request, in our Lewiston office as provided under the Freedom of Access law.
- As it pertains to Public Records, it is my belief that MPBN is neither an agency of the state nor are its employees public officials. As such, it is my belief that the Public Records provisions of Chapter 13 do not apply to MPBN.

Within that context, my response to each of your questions follows:

1. Enclosed, for your convenience, is a copy of MPBN's audited financial statements for the years ended June 30, 2010 and 2009. This document is made available to the public on our website, www.mpbnet.net.
2. Enclosed, for your convenience, is a copy of MPBN's draft Form 990 for the year ended June 30, 2010. I will let you know if any substantive changes are made prior to its filing which is due February 15, 2011. This document is also made available to the public through both the IRS website and on MPBN's website, www.mpbnet.net.
3. The roster of full-time employees, their job titles and salary ranges is not a document we normally share and is not enclosed. However, the Form 990

Television • Radio • Education • Internet

With offices and studios in Bangor, Lewiston and Portland
mpbn.net

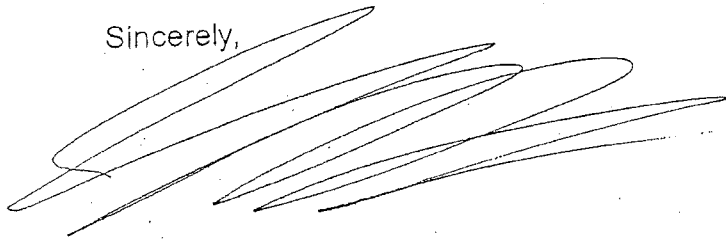
- referred to above discloses for all employees who are compensated at \$100,000 or higher, their name, title and total compensation.
4. The listing of part-time and/or contract employees who received an IRS Form 1099 and the amounts they received is not a document we normally share and is not enclosed.
 5. A listing of our Board of Trustees is also made available to the public on our website, www.mpbn.net . A listing, including their terms of office is enclosed for your convenience.

I again apologize for the tardiness of my reply to your request.

If there is anything else I can do for you, do not hesitate to contact me directly. I have enclosed one of my business cards. It contains my direct contact information.

When and if an article results from this information response, I would appreciate receiving a copy. Thank you.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping, sweeping strokes that form a cursive, somewhat abstract shape.

John F. Isacke
Vice President and Chief Financial Officer

Cc: Alan L. Baker, Publisher, The Ellsworth American (w/o Enc)
P. James Dowe, President, Maine Public Broadcasting Network (w/o Enc)

Ellsworth American/State of Maine Column/Mike Brown/Issue 2/17/11

MPBN's Violation of the Maine FOA Act

The Maine Freedom of Access Act lies at the heart of a democratic government. It grants the people of this state a broad right of access to public records with transparency, a fundamental principle of the Act. Within its many statute definitions is the right to a filer's response within five days.

On December 15, 2010 filer Hometown News Service requested of James Dowe, president of Maine Public Broadcasting Network, certain financial records of MPBN under the Freedom of Access Act. The response date was overdue on January 7, 2011 and the filer contacted the MPBN office and was informed that the request had been forwarded to the financial department. On January 17, there was still no response. As the filer contemplated court action under the Act there was a phone response on 2/3/11/ from John F. Isacke, MPBN vice president and chief financial officer, which was 45 days from the original response and some forty days in violation of the Freedom of Access Act.

MPBN comes under the Act's public proceedings definitions as "the board of directors of a non-profit, non-stock, private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees."

Although VP Isacke provided hard copy duplicates of certain financials--IRS 990 for 2009 and Audited Report, 2010 - he wrote in a cover letter that, "I do not believe that all the items requested are subject to the FOA Act." He further stated, "I am not a lawyer, but my simple reading of Chapter 13 as it pertains to Public Records is that neither is MPBN an agency of the state nor are its employees public officials."

What VP Isacke was referring to in the filer's request was (1) a copy of MPBN's full-time employees with their job titles and ranges for pay grade and (2) a listing of contract employees who received IRS Form 1099 and the amounts they received. These two items have been in the filer's request to MPBN for nearly a decade and fully furnished even with specific names and specific salary although only a salary range was requested.

MPBN is one of the largest media corporations in Maine employing 119 employees and therefore has considerable impact on information, ideas and news content in programs provided to nearly all of Maine citizens through transmitters throughout the state.

MPBN is a \$15.5 million tax-exempt corporation according to its 2009 IRS report. A substantial revenue stream is public support, that is, taxpayer funds. In its 2010 revenue, the State of Maine, via taxpayers, contributed \$1,954,235 and the Corporation for Public Broadcasting, via taxpayers, \$1,574,366, other government grants of \$33,016, via taxpayers, for a total of \$3,561,617. The MPBN membership revenue was \$3,566,370 or only \$4,753 more than public taxpayer support.

According to its 2010 audit, the reported 118 anonymous (so stated VP Isacke) employees received \$5,001,699 in salaries and benefits. The only employee identified in the IRS 990 Form was President James Dowe with a salary of \$156,325 plus \$7,328 in retirement and other deferred compensation.

Phone conversations with VP Isacke indicated that the reason for the 'delay' of response - he did not admit to violation of the Act - was that he was "too busy." Also, he objected to sending hard copy data when the internet was available. However, in its self-praising organization overview on its IRS 2009 Form it states precisely, "Any member of the general public can also request either verbally or in writing that these documents be sent to them."

As to VP Isacke's "simple reading" of the FOA Act that MPBN is not subject to Public Proceedings and Public Records under the Act in regard to employee salaries and pay ranges - that private opinion appears to be in conflict with the term "public proceedings meaning the transactions of any function affecting any and all citizens of the state." The fact that Maine citizens contributed \$1,954,235 to support MPBN salaries and benefits in 2010 should be considered a function.

Apparently there has been some shading in the transparency of MBPN since the open and full cooperation of MPBN President Jim Dowe through the years. The fact that MPBN was 45 days late and in violation of the FOA Act should be of considerable concern of all citizens and

especially the state legislature which appropriates millions in support of MPBN programming when the state itself has financial concerns of providing its citizens with basic needs of subsistence livability with the challenge of declining revenues.

Nothing so darkens the transparency of government and its ancillary providers of public information than the shadows of silence.

-30-

Right to Know Advisory Committee
Legislative Subcommittee
DRAFT: Using technology to conduct public proceedings

PART A

Sec. A-1. 1 MRSA § 403-A is enacted to read:

§403-A. Public proceedings through other means of communication

This section governs public proceedings, including executive sessions, during which public or governmental business is discussed or transacted through telephonic, video, electronic or other means of communication.

1. Requirements. A body subject to this subchapter may conduct a public proceeding during which a member of the body participates in the discussion or transaction of public or governmental business through telephonic, video, electronic or other means of communication only if the following requirements are met.

A. The body has adopted a policy that authorizes a member of the body who is not physically present to participate in a public proceeding through telephonic, video, electronic or other means of communication in accordance with this section.

B. Notice of the public proceeding has been given in accordance with section 406.

C. A quorum of the body is assembled physically at the location identified in the notice required by section 406.

D. The physical attendance by each member who is participating from another location is not reasonably practical. The reason that each member's physical attendance is not reasonably practical must be stated in the record of the public proceeding.

E. Each member of the body participating in the public proceeding is able to simultaneously hear each other and speak to each other during the public proceeding. Members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations.

F. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication identifies the persons present in the location from which the member is participating.

G. All votes taken during the public proceeding are taken by roll call vote.

H. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication has received prior to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available.

I. The public proceeding is not a public hearing.

2. Voting. A member of a body who is not physically present and who is participating in the public proceeding through telephonic, video, electronic or other means of communication may not vote:

A. On any issue for which materials providing additional information that may influence the member's decision are presented at the public proceeding but have not been provided to the member by the time of the vote; or

B. On any issue concerning testimony or other evidence provided during the public proceeding if it is a judicial or quasi-judicial proceeding.

3. Exception to quorum requirement. A body may convene a public proceeding by telephonic, video, electronic or other means of communication without a quorum assembled physically at one location if:

A. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742;

B. The public proceeding is necessary to take action to address the emergency; and

C. The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency.

4. Annual meeting. If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other means of communication from a different location.

Seek input of agencies before making legislative changes to statutory procedures below.

PART B

Finance Authority of Maine

Sec. B-1. 10 MRSA §971 is amended to read:

§971. Actions of the members

Seven members of the authority constitute a quorum of the members. The affirmative vote of the greater of 5 members, present and voting, or a majority of those members present and voting is necessary for any action taken by the members. No vacancy in the membership of the authority may impair the right of the quorum to exercise all powers and perform all duties of the members.

Notwithstanding any other provision of law, in a situation determined by the chief executive officer to be an emergency requiring action of the members on not more than 3 days' oral notice, an emergency meeting of the members may be conducted by telephone in accordance with Title 1, section 403-A and the following.

1. Placement of call. A conference call to the members must be placed by ordinary commercial means at an appointed time.

2. Record of call. The authority shall arrange for recordation of the conference call when appropriate and prepare minutes of the emergency meeting.

3. Notice of emergency meeting. Public notice of the emergency meeting must be given in accordance with Title 1, section 406 and that public notice must include the time of the meeting and the location of a telephone with a speakerphone attachment that enables all persons participating in the telephone meeting to be heard and understood and that is available for members of the public to hear the business conducted at the telephone meeting.

Ethics Commission *(any changes?)*

Sec. B-2. 21-A MRSA §1002 is amended to read:

§1002. Meetings of commission

1. Meeting schedule. The commission shall meet in Augusta for the purposes of this chapter at least once per month in any year in which primary and general elections are held and every 2 weeks in the 60 days preceding an election. In the 28 days preceding an

election, the commission shall meet in Augusta within one calendar day of the filing of any complaint or question with the commission. Agenda items in the 28 days preceding an election must be decided within 24 hours of the filing unless all parties involved agree otherwise.

2. Telephone meetings. The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public. Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:

- A. During the 28 days prior to an election when the commission is required to meet within 24 hours of the filing of any complaint or question with the commission; or
- B. To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.

3. Other meetings. The commission shall meet at other times on the call of the Secretary of State, the President of the Senate, the Speaker of the House or the chair or a majority of the members of the commission, as long as all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

4. Office hours before election. The commission office must be open with adequate staff resources available to respond to inquiries and receive complaints from 8 a.m. until at least 5:30 p.m. on the Saturday, Sunday and Monday immediately preceding an election and from 8 a.m. until at least 8 p.m. on election day.

Emergency Medical Services Board

Sec. B-3. 32 MRSA §88, sub-§1, ¶D is amended to read:

§88. Emergency Medical Services' Board

The Emergency Medical Services' Board, as established by Title 5, section 12004-A, subsection 15, is responsible for the emergency medical services program.

1. Composition; rules; meetings. The board's composition, conduct and compensation are as follows.

A. The board has one member representing each region and 11 persons in addition. Of the additional persons, one is an emergency physician, one a representative of emergency medical dispatch providers, 2 representatives of the public, one a representative of for-profit ambulance services, one an emergency professional nurse, one a representative of nontransporting emergency medical services, one a representative of hospitals, one a representative of a statewide association of fire chiefs, one a municipal emergency medical services provider and one a representative of not-for-profit ambulance services. The members that represent for-profit ambulance services, nontransporting emergency medical services and not-for-profit ambulance services must be licensed emergency medical services persons. One of the nonpublic members must be a volunteer emergency medical services provider. Appointments are for 3-year terms. Members are appointed by the Governor. The state medical director is an ex officio nonvoting member of the board.

B. The board shall elect its own chair to serve for a 2-year term. The board may adopt internal rules that may include, but are not limited to, termination of board membership as a consequence of irregular attendance. If a board member does not serve a full term of appointment, the Governor shall appoint a successor to fill the vacancy for the remainder of the term. Any board member may be removed by the Governor for cause. The board may have a common seal. The board may establish subcommittees as it determines appropriate.

C. The board shall meet at least quarterly, and at the call of its chair or at the request of 7 members. When the board meets, members are entitled to compensation according to the provisions of Title 5, chapter 379.

D. A majority of the members appointed and currently serving constitutes a quorum for all purposes and no decision of the board may be made without a quorum present. A majority vote of those present and voting is required for board action, except that for purposes of either granting a waiver of any of its rules or deciding to pursue the suspension or revocation of a license, the board may take action only if the proposed waiver, suspension or revocation receives a favorable vote from at least 2/3 of the members present and voting and from no less than a majority of the appointed and currently serving members. The board may use video conferencing and other technologies in compliance with Title 1, chapter 13, subchapter 1, to conduct its business but is not exempt from Title 1, chapter 13, subchapter 1. Members of the board, its subcommittees or its staff may participate in a meeting of the board, subcommittees or staff via video conferencing, conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection constitutes presence in person at such meeting.

Workers' Compensation Board

Sec. B-4. 39-A MRSA §151, sub-§5 is amended to read:

5. Voting requirements; meetings. The board may take action only by majority vote of its membership. The board may hold sessions at its central office or at any other place within the State and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology in compliance with Title 1, chapter 13, subchapter 1. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the 4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

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From LD 1792: RTK AC recommendations for FAME confidentiality statutes
(Deleted from LD 1792 by JUD in Committee Amendment)

Sec. 4. 10 MRSA §975-A, as amended by PL 2003, c. 537, §17 and affected by §53, is repealed.

Sec. 5. 10 MRSA §975-B is enacted to read:

§ 975-B. Freedom of access; confidentiality of records

The records of the authority are public records, except as specifically provided in this section.

1. Confidential records. The following records are designated as confidential:

A. Records containing any information acquired by the authority or a member, officer, employee or agent of the authority, from an applicant for or recipient of financial assistance provided pursuant to a program administered or established by the authority is confidential for purposes of Title 1, section 402, subsection 3, paragraph A if the applicant or recipient is an individual.

B. A record obtained or developed by the authority that:

(1) A person, including the authority, to whom the record belongs or pertains has requested be designated confidential; and

(2) The authority has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the record, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains.

C. A financial statement or tax return.

D. A record that contains an assessment by a person who is not employed by the authority of the credit worthiness or financial condition of any person or project.

E. A record obtained or developed by the authority prior to receipt of a written application or proposal if the application or proposal is for financial assistance to be provided by or with the assistance of the authority, or in connection with a transfer of property to or from the authority. After receipt by the authority of the application or proposal, a record pertaining to the application or proposal is not to be considered confidential unless it meets the requirements of the other paragraphs of the subsection.

F. Any financial statement or business and marketing plan in connection with

From LD 1792: RTK AC recommendations for FAME confidentiality statutes
(Deleted from LD 1792 by JUD in Committee Amendment)

any project receiving or to receive financial assistance from the authority pursuant only to subchapters III or IV, except section 1053, subsection 5, if a person to whom the statement or plan belongs or pertains has requested that the record be designated confidential; and

G. Any record, including any financial statement, business plan or tax return obtained or developed by the authority in connection with the matching of potential investors with Maine businesses by the authority through its maintenance of a data base or other record keeping system. For purposes of this section, an application by a potential investor shall not be deemed to be an application for financial assistance.

The authority shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or record, including information designated confidential under this subsection, specified in the written request. The information or record may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by the committee and may not be released for any other purpose.

2. Exceptions. Notwithstanding subsection 1, the following are public records and are not confidential:

A. Any otherwise confidential information the confidentiality of which the authority determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information.

D. Names of recipients of or applicants for financial assistance, including principals, where applicable;

E. Amounts, types and general terms of financial assistance provided to those recipients or requested by those applicants;

F. Descriptions of projects and businesses benefiting or to benefit from the financial assistance;

G. Names of transferors or transferees, including principals, of property to or from the authority, the general terms of transfer and the purposes for which transferred property will be used;

From LD 1792: RTK AC recommendations for FAME confidentiality statutes
(Deleted from LD 1792 by JUD in Committee Amendment)

H. The number of jobs and the amount of tax revenues projected or resulting in connection with a project;

I. Upon the authority's satisfaction of its loan insurance liability, the amount of any loan insurance payments with respect to a loan insurance contract; and

J. Names of financial institutions participating in providing financial assistance and the general terms of that financial assistance;

K. Any information necessary to carry out section 1043 or 1063;

L. The annual report of the authority required pursuant to section 974.

3. Disclosure prohibited; further exceptions. A person may not knowingly divulge or disclose records designated confidential by this section, except that the authority, in its discretion and in conformity with legislative freedom of access criteria in Title 1, chapter 13, subchapter 1A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;

B. Information requested by a financing institution or credit reporting service;

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;

D. If necessary to ensure collection of any obligation in which the authority has or may have an interest;

E. In any litigation or proceeding in which the authority has appeared, introduction for the record of any information obtained from records designated confidential by this section; and

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority.

G. If necessary in connection with acquiring, maintaining, or disposing of property; and

From LD 1792: RTK AC recommendations for FAME confidentiality statutes
(Deleted from LD 1792 by JUD in Committee Amendment)

H. Information to the extent the authority deems the disclosure necessary to the sale or transfer of revenue obligation securities or to the sale or transfer of bonds of the State.

RTK AC General Agency Confidential Individual and Business Records Template

Sec. X. XX MRSA §XXX-X, as amended by PL XXXX, c. XXX, §XX and affected by §XX, is repealed.

Sec. X. XX MRSA §XXX-X is enacted to read:

§ XXX-X. Freedom of access; confidentiality of records

The records of the [board, agency, authority, etc.] are public records, except as specifically provided in this section.

1. Confidential records. The following records are designated as confidential:

A. Records containing any information acquired by the [board, agency, authority, etc.] or a member, officer, employee or agent of the [board, agency, authority, etc.] from an applicant for or recipient of financial assistance provided pursuant to a program administered or established by the [board, agency, authority, etc.] is confidential for purposes of Title 1, section 402, subsection 3, paragraph A if the applicant or recipient is an individual.

B. A record obtained or developed by the [board, agency, authority, etc.] that:

(1) A person, including the [board, agency, authority, etc.], to whom the record belongs or pertains has requested be designated confidential; and

(2) The [board, agency, authority, etc.] has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the record, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains.

C. A financial statement or tax return.

D. A record that contains an assessment by a person who is not employed by the [board, agency, authority, etc.] of the credit worthiness or financial condition of any person or project.

E. A record obtained or developed by the [board, agency, authority, etc.] prior to receipt of a written application or proposal if the application or proposal is for financial assistance to be provided by or with the assistance of the [board, agency, authority, etc.], or in connection with a transfer of property to or from the [board, agency, authority, etc.]. After receipt by the [board, agency, authority, etc.] of the application or proposal, a record pertaining to the application or proposal is

RTK AC General Agency Confidential Individual and Business Records Template

not to be considered confidential unless it meets the requirements of the other paragraphs of the subsection.

The [board, agency, authority, etc.] shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or record, including information designated confidential under this subsection, specified in the written request. The information or record may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by the committee and may not be released for any other purpose.

2. Exceptions. Notwithstanding subsection 1, the following are public records and are not confidential:

A. Any otherwise confidential information the confidentiality of which the [board, agency, authority, etc.] determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information.

3. Disclosure prohibited; further exceptions. A person may not knowingly divulge or disclose records designated confidential by this section, **except that the [board, agency, authority, etc.], in its discretion and in conformity with legislative freedom of access criteria** in Title 1, chapter 13, subchapter 1A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;

B. Information requested by a financing institution or credit reporting service;

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;

D. If necessary to ensure collection of any obligation in which the [board, agency, authority, etc.] has or may have an interest;

E. In any litigation or proceeding in which the [board, agency, authority, etc.] has appeared, introduction for the record of any information obtained from records designated confidential by this section;

RTK AC General Agency Confidential Individual and Business Records Template

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority; and

G. If necessary in connection with acquiring, maintaining, or disposing of property.

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Notes and Policy Determinations for the RTK-AC Template

Subsection 1: Exceptions to Public Records

All records are public records except: Section 1, A through E.

Section 1A – States explicitly that all individual records are confidential, except that they can be given for a confidential and lawful purpose to a legislative committee (last paragraph in Subsection 1), and as provided in Subsection 2: Exceptions.

This transfers over the proposal from the RTK-AC original template the idea that individual records are presumed to be confidential. This distinction between businesses and individuals is not present in the original Fame statute, so there will need to be a policy determination as to whether to include it or not.

If a blanket confidential status is not included for “individuals,” then the committee should consider transferring over subsection 2c from the original Fame statute, which allows the authority discretion to determine if the release of a tax return or financial statement would violate “personal privacy.” However, if 1A of the template is included to provide that records of individuals are confidential, this section would likely not be necessary.

If 1A is not included, the only files that will be confidential will be the following:

- 1B: the owner of the information requests that it is confidential, AND the agency or authority determines that it would give another person a business advantage
- 1C: A financial statement or tax return.
- 1D: A record prepared by someone outside the agency, which contains a person’s credit report, or financial status.

1E, 1F, and 1G contain additional records that are confidential from the Fame statute, that can and are left off the general template for other agencies:

(1E) Any materials received relating to an application for financial assistance PRIOR to receipt of the actual application would be confidential. Note that once the application has been received, this material becomes a public record unless covered by one of the exceptions.

(1F) Fame specific financial statement or business plan records “pursuant only to subchapters III or IV, except section 1053, subsection 5.”

(1G) Fame specific records matching potential investors to Maine businesses.

Subsection 2, NOT Confidential

Resp #3 (B)

Subsection 2 contains the exceptions where records that would otherwise be confidential under Subsection 1, are made public, there are 3 common to both the previous RTK-AC templates and the original Fame statute, and cover most of the explicit disclosure requirements from the first section of the original Fame statute (975A), additional Fame specific disclosure requirements are highlighted, are removable, and were not included in the general template as they may not be appropriate for all agencies. They were added in an effort to transfer the clarity of Fame's original statute's "disclosure required" section. Some provisions were not transferred over, as they were conceptually covered by other provisions of the template.

Subsection 3: Agency has Discretion Whether to Release

Subsection 3 contains the specific situations where the agency CAN release information, if it determines it is appropriate under the Maine Right to Know laws.

Subsection 3 is another section that contains provisions from the Fame that might not be appropriate for other agencies: 3G, and 3H. 3G grants the authority the discretion to release information when necessary in connection with acquiring, maintaining, or disposing of property, and 3H grants discretion to release information when deemed necessary to the sale of securities or state bonds.

3G was left on the general template, and might be too broad, and so the committee should make a policy determination on this issue.

Office of Information Technology

Home → Policies, Standards & Procedures → E-Mail Usage and Management Policy

E-Mail Usage and Management Policy

Effective September 13, 2004

Introduction and Statement of Purpose

Electronic mail (e-mail) refers to the electronic transfer of information typically in the form of electronic messages, memoranda, and attached documents from a sending party to one or more receiving parties via an intermediate telecommunications system. E-mail is a core tool utilized by State agencies to improve the way they conduct business by providing a quick and cost-effective means to create, transmit, and respond to messages and documents electronically. Well-designed and properly managed e-mail systems expedite business communications, reduce paperwork, and automate routine office tasks thereby increasing productivity and reducing costs. These opportunities are, however, at risk if e-mail systems are not used and managed effectively.

The purpose of this policy is to promote the use of e-mail as an efficient communication and data gathering tool, to ensure that State agencies have the information necessary to use e-mail to their best advantage in supporting agency business, to avoid non-work-related distractions of employees, to avoid subjecting the State's e-mail system to computer viruses, and to otherwise avoid interfering with or damaging the effective functioning of the State's e-mail system. By establishing and maintaining compliance with a policy for appropriate use and management of e-mail, risks and costs to agencies can be mitigated while maximizing the potential of this communication tool.

Scope

This policy applies to all State employees, as well as contract staff, who use the State's electronic mail.

General Policy

It is the policy of Maine State Government that e-mail is used for internal and external communications that serve legitimate state government functions and purposes. Any personal use must be of an incidental nature and not interfere with business activities. Personal use must not involve solicitation, must not be associated with any outside business activity or personal gain, must not be libelous or defamatory, must not

Resp #4(A)

violate the State of Maine Policy on Employee Harassment, must not potentially embarrass the State of Maine, its residents, its taxpayers, or its employees or be used for any unlawful purpose. Copyright restrictions and regulations shall be observed. The information communicated over agency e-mail systems is subject to the same laws, regulations, policies, and other requirements as information communicated in other written forms and formats and is not to be utilized for political purposes.

Each State agency is responsible for enforcing this policy and establishing management practices consistent with this policy that, among other goals:

- support agency business;
- reduce legal and other potential risks;
- define managerial authority over e-mail communications;
- describe the appropriate use of e-mail communications;
- train employees in e-mail use and policies; and
- provide for necessary records retention, accessibility, and protection.

Agencies with special requirements for information confidentiality (for example, confidential client records) may be required to establish additional safeguards to protect this data.

Access to E-mail Services

E-Mail services are provided to all appropriate staff and contractors within departments. To request access, contact the Bureau of Information Services or appropriate agency personnel. o -o

Privacy and Access

- **Mail messages are not personal and private. Managers, supervisors, and technical staff may access an employee's e-mail in accordance with the department security policy for reasonable business purposes, including but not limited to:**
 - for a legitimate business purpose (e.g., the need to access information when an employee is absent);
 - to diagnose and resolve technical problems involving system hardware, software, or communications; and/or
 - to investigate possible misuse of e-mail when a reasonable suspicion of abuse exists or in conjunction with an approved investigation.
- An employee, with the exceptions noted above, is prohibited from accessing another user's e-mail without his or her permission.
- *All e-mail messages including personal communications* may be subject to discovery proceedings in legal actions.

- *All* e-mail messages sent or received and which are not otherwise protected by law, are public documents and may be released to the public under the Freedom of Access Law.

Security

E-mail security is a joint responsibility of technical staff and e-mail users. Users must take all reasonable precautions, including safeguarding and changing passwords, to prevent the use of their e-mail account by unauthorized individuals.

Management and Retention of E-mail Communications

A . Applicable to all e-mail messages and attachments

Since e-mail is a communications system, messages should not be retained for extended periods of time.

Users should:

- remove or archive all e-mail communications in a timely fashion.
- delete records of transitory or little value that are not normally retained in record keeping systems as evidence of an agency's activity.

B. Applicable to records communicated via e-mail

E-mail created in the normal course of official business and retained as evidence of official policies, actions, decisions or transactions are records and are subject to the records management requirements documented by the Maine State Archives. (A copy of the Maine State Archives' guide to e-mail retention is attached.) Records communicated using e-mail need to be identified, managed, protected, and retained as long as they are needed to meet operational, legal, audit, research or other requirements.

For agency specific questions surrounding record retention requirements contact Records Management at the Maine State Archives for assistance.

Examples of messages sent by e-mail that typically are records include:

- policies and directives
- correspondence or memoranda related to official business
- work schedules and assignments
- agendas and minutes of meetings
- drafts of documents that are circulated for comment or approval
- any document that initiates, authorizes, or completes a business transaction
- final reports or recommendations

Some examples of messages that *typically do not constitute records* are:

- personal messages and announcements
- copies or extracts of documents distributed for convenience or reference
- phone message notes

Roles and Responsibilities

- Executive management will ensure that the policy is implemented by program unit management and unit supervisors.
- Unit managers and supervisors will develop and/or publicize record keeping practices in their area of responsibility including the routing, formatting, and filing of records communicated via e-mail. They will train staff in appropriate use, including appropriate personal use of e-mail that does not result in performance issues, and be responsible for ensuring the security of physical devices and passwords.
- Network administrators and internal control (and/or internal audit) staff are responsible for e-mail security, backup, and disaster recovery.
- Users are responsible for adherence to this policy.

Proper Usage

All e-mail users will understand and comply with this policy, including but not limited to:

- understand that personal use must be of an incidental nature only
- comply with agency and unit policies, procedures, and standards
- protect confidentiality
- be aware that sending e-mail of a political nature (supporting candidates, soliciting contributions, etc.) is against the law and subject to criminal penalties (5 U.S.C. §1501 et seq., and 5 M.R.S.A. §7056-A 5 M.R.S.A §1976)
- immediately delete any chain letters received through the State's e-mail system
- consider organizational access before sending, filing, or destroying e-mail messages.
- protect their passwords
- receive approval of supervisor and permission from the Commissioner of the Department of Administrative and Financial Services, or her designee, before sending state wide communications <http://inet.state.me.us/dafs/policies.htm>
- respond to e-mail in a timely fashion
- do not in any way use e-mail access or transmit prohibited content of a sexual nature
- delete any messages that may contain offensive material and report to management

- remove personal messages, transient records, and reference copies in a timely manner.
- not use e-mail for outside business activity or personal gain
- observe all copyright restrictions and regulations
- not use e-mail for any unlawful or illegal purpose
- not use e-mail to promote discrimination on the basis of race, religion, national origin, disability, sexual orientation, age, marital status, gender, or political affiliation
- not create e-mails that may be defamatory or libelous
- consider organizational access and retention requirements before sending, filing, or destroying e-mail messages
- be courteous and follow accepted standards of etiquette
- must not use the e-mail system to solicit for causes unrelated to state business
- must not knowingly send or receive e-mails that contain a virus

Violations of this policy

Any violation of this policy could result in disciplinary action up to and including termination.

Policy Review and Update

The Office of Chief Information Officer will periodically review and update this policy as new technologies and organizational changes are planned and implemented.

Questions concerning this policy should be directed to the Chief Information Officer.

Related Policies

Policy for Use of State E-mail System for Widespread Dissemination to State Employees <http://inet.state.me.us/dafs/policies.htm>

Credits

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Maine State Government
Dept. of Administrative & Financial Services
Office of Information Technology

Office of Information Technology Policy on Access to Data and Information on State Owned Computer Devices

I. Statement

The responsibility for responding to Freedom of Access Act^[1] requests for data or information that is hosted on state-owned computer devices falls to the State department and/or agency responsible for the collection and use of the data or information requested. The Office of Information Technology will provide assistance to the department or agency with searching for, identifying all data stored within OIT, retrieving, and/or compiling such data or information when requested to do so.

II. Purpose

This policy sets forth the respective responsibilities of State departments and agencies, and the Office of Information Technology, in responding to Freedom of Access Act requests for data or information that is hosted on state-owned computer devices.

III. Applicability

This policy applies to all requests for data or information presented to the Office of Information Technology (OIT).

IV. Responsibilities

A. The Chief Information Officer (CIO) will:

1. Immediately forward all requests for a department's or agency's data or information to the head of that department or agency, or their designee, for response. A notice will be sent to the requester confirming this action, and will include the contact information for the individual to whom the request was forwarded.
2. OIT will identify all medium where requested data may be stored and provide this information to the responding agency.
3. As requested, assign OIT staff to provide support to agencies in meeting their requests for information and data.

B. State departments and agencies, as required by the Freedom of Access Act^[2], are responsible for fulfilling requests for access to public records including information and data hosted on state-owned computer devices. All responses and decisions regarding the production of such information or data, such as the scope of the search, the redaction or withholding of information, the timing and cost of production, etc., are the sole responsibility of the department or agency.

V. Guidelines & Procedures

A. No OIT employee shall provide public access to data and/or information hosted on OIT computer devices without prior consultation with the department or agency that is the custodian of the data or information.

Resp #4 (B)

B. Freedom of Access Act requests received by OIT employees will be forwarded to the CIO who will forward to the appropriate department or agency head.

VI. Definitions

1. Computer Device - Computer device means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device^[3]. Common examples currently in use include laptops, personal computers, servers, and hand-held devices (including personal digital assistants (PDA), and cell phones).

VII. References

1. This policy supersedes the State of Maine Policy on Access to Public Records adopted by the Information Services Policy Board March 9, 1990.
2. M.R.S.A. Title 5, Section 1982^[4] Paragraph 9. Protection of Information Files reads in part “...All data files are the property of the agency or agencies responsible for their collection and use.”

VIII. Document Information

1. Document Reference Number: 4
2. Category: General / Governance
3. Adoption Date: Provisionally adopted on October 6, 2006 pending review by the IT Executive Committee. Reviewed and approved October 30, 2006.
4. Effective Date: October 6, 2006
5. Review Date: February 9, 2011
6. Point of Contact: Kathy Record, Associate Chief Information Officer, Office of Information Technology, Statehouse Station #138, Augusta, Maine 04332-0138 (207) 624-9502
7. Approved By: Richard B. Thompson, Chief Information Officer
8. Position Title(s) or Agency Responsible for Enforcement: Richard B. Thompson, Chief Information Officer, Office of Information Technology
9. Legal Citation: 5 M.R.S.A. SECTION 1982 Paragraph 9 Powers and Duties of the Chief Information Officer; and 1 M.R.S.A. SECTION 408 Freedom of Access
10. Waiver Process: N/A

^[1] 1 M.R.S.A. § 401 *et seq.*, <http://janus.state.me.us/legis/statutes/1/title1sec401.html>

^[2] 1 M.R.S.A. § 408, <http://janus.state.me.us/legis/statutes/1/title1sec408.html>

^[3] 17-A M.R.S.A. § 431, <http://janus.state.me.us/legis/statutes/17-a/title17-asec431.html>

^[4] <http://janus.state.me.us/legis/statutes/5/title5sec1982.html>